

Footnote 543

[REDACTED]

From: Richardson, Susan
Sent: Thursday, December 23, 2010 1:08 PM
To: Harris, Scott Blake
Subject: RE: Approval Process for Restructuring Agreements

Thank you Scott Owen and I have both spoken to [REDACTED] and believe we have a path forward.

Merry Merry and Happy Happy!

-----Original Message-----

From: Harris, Scott Blake
Sent: Thursday, December 23, 2010 1:02 PM
To: Richardson, Susan
Subject: RE: Approval Process for Restructuring Agreements

I've asked [REDACTED] to speak with you. We can bring this to a conclusion after the holidays. Speaking of which, have a Merry Christmas and a Happy New Year.

Scott

Scott Blake Harris
General Counsel
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
[REDACTED]

-----Original Message-----

From: Richardson, Susan
Sent: Thursday, December 23, 2010 9:23 AM
To: Harris, Scott Blake
Cc: Nwachuku, Frances; Barwell, Owen; Silver, Jonathan; [REDACTED] Richardson, Susan
Subject: FW: Approval Process for Restructuring Agreements

Scott,

As discussed briefly, we need to confirm a process for authorizing the LPO to enter into the proposed restructuring agreements for Solyndra. (We are also working on a permanent process for approving significant amendments and restructurings; but that will not be done in time for the Solyndra closing.) The closing is scheduled for January 7th, and the timing is critical to permit continued funding and avoid more serious problems. My recommendation - which is consistent with existing authorities, and with practice both in other government agencies and in private sector financial institutions - is that the Director of Monitoring and the Executive Director, LPO seek approval from S-1, through an Action Memo that you approve, but that there be no formal credit committee or CRB process. JS will discuss this with Dan Poneman, and CRB will presumably get some form of notice.

The relevant authorities are summarized below:

1) Statute and Regs.: Neither Title XVII nor the Final Rule addresses the approval process. Title XVII sets forth a number of Secretarial determinations that must be made before the

Footnote 544

[REDACTED]

From:

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Subject:

Attachments:

[REDACTED]
Wednesday, December 08, 2010 11:37 AM

Nwachuku, Frances; [REDACTED]

Solyndra valuation

Preliminary Assessment of Solyndra Liquidation Value.docx

Frances: As requested I have put together a very simplistic analysis of company valuation under both an orderly liquidation and going-concern basis. Please consider these calculations rudimentary at best -- I have not taken time to review any analyst reports, PV sector data or company specific documents to support these numbers. (I am also not an equity analyst, so my credibility must be considered suspect.)

That said, here is my first cut. I have suggested that [REDACTED] review the latest company construction report to help validate some of my assumptions.

[REDACTED]

[REDACTED]

Preliminary Assessment of Solyndra Liquidation Value

Following is a very simplistic analysis of Solyndra liquidation value under both an orderly liquidation and going-concern basis. It is recommended that additional, more rigorous analysis be completed as time permits.

Orderly Liquidation Analysis

Key Assumptions:

- Liquidation takes place prior to completion of Fab 2
- Building is leased and therefore has no value in liquidation
- Equipment installed in Fab 2 is largely unused, but highly customized for Solyndra processes
 - Most equipment has little value in other applications
 - Estimate of installed equipment cost ~~to be verified by reference to detailed budget and construction reports~~
 - Total equipment cost per budget: \$300mm
 - Estimate of installation costs: 30%
 - Percent of equipment received/installed: 65%
 - Hard equipment cost: $\$300 * 70% * 70% = \147mm
- Liquidation value: 10% - 20%
 - Appraisal done for Abound indicated liquidation value of equipment ranging from 20% for custom equipment to 80% for off-the-shelf tools that can be used for other purposes
 - Fitch analysis for Abound concludes salvage value for tools at 10%
 - Given customized nature of almost all of Solyndra tools, recommend using 10%-20%

Concluded Value: \$15mm - \$30mm

Going Concern Analysis

Key Assumptions:

- Fab 2 is completed in Q2, 2011 and valuation is made of that date
- Going concern sale includes all collateral needed to run the business, including equipment, IP, contracts, workforce, etc.
- Sales pipeline and operating experience support the proposition that Solyndra business plan is viable

Comparable Construction Cost Analysis: Analysis based on the construction cost of other thin-film PV manufacturing facilities. Obviously, value ascribed to manufacturing plant will vary based on expected operating margins for the enterprise as a whole, but a review of what others are willing to invest in PV manufacturing capacity is instructive.

- Abound
 - Hard costs estimated: \$700mm
 - Approximate capacity at completion: 800MW (Increases over time)
 - Capacity cost/watt: $\$700\text{mm}/800\text{MW} = \$.90/\text{watt}$
- SoloPower
 - Hard costs estimated: \$305mm

- Approximate capacity at completion: 300 MW
- Capacity cost/watt: \$305mm/300MW = \$1.00/watt
- First Solar
 - Capacity installation cost reported at between \$1.00/watt - \$1.20/watt
- Solyndra
 - Installed capacity is expected to reach 300MW, predicated on panel efficiency of 252 watts/panel
 - At expected 2011 efficiency of approximately 220 watts/panel, plant capacity is 260 MW
 - As a positive, the Solyndra manufacturing process has been demonstrated through Fab1
 - As a negative, the ability to produce at targeted costs has not yet been demonstrated

Assuming \$1.00/w of installed capacity, value for going concern business is +/- \$260mm

EBITDA Comparables Analysis: Publicly traded PV manufacturers provide an indication of value based on trading values relative to EBITDA. Solyndra does not have trailing EBITDA numbers, but projected EBITDA can provide some measure of value of appropriate discounting.

- First Solar:
 - Trailing 12-month EBITDA multiple is 11.7x
 - Analyst earnings projections: 1%-5% growth 2011/2010
 - First Solar is trading at about 11x year ahead EBITDA
- SunPower:
 - TTM EBITDA multiple is 8.25x
 - Analyst earnings projections: 30% growth 2011/2010
 - SunPower is trading at ~6x year ahead EBITDA
- Solyndra
 - Projected EBITDA for 2012 is \$60mm
 - Given risks, 6x projected EBITDA should be considered a ceiling on valuation. More likely estimate is 3x-4x

Assuming 3x project EBITDA, valuation is approximately \$180mm. At 4x EBITDA, valuation is \$240mm. At 6x, valuation is \$360mm. Realistic range is \$200 - \$300 mm.

Concluded value for going concern: \$200-\$300mm

Footnote 546

[REDACTED]

From: Nwachuku, Frances
Sent: Friday, December 10, 2010 3:48 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Solyndra.2010.12.10.1540.KCC.V.1
Attachments: Solyndra 2010 12 10 1540 KCC V 2.docx

Just a few minor edits.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[REDACTED]

From: [REDACTED]
Sent: Friday, December 10, 2010 3:42 PM
To: [REDACTED]
Cc: [REDACTED]; Nwachuku, Frances
Subject: Solyndra.2010.12.10.1540.KCC.V.1

Attached is a revised term sheet which I believe reflects the agreement of the parties. Please review and then lets discuss. [REDACTED]

Solyndra
Proposed Key Business Terms and Conditions

Structural Consideration: All assets (including Intellectual property) to be moved into Fab 2 LLC. Net operating losses Operating Losses currently Solyndra, Inc. to remain at Solyndra, Inc. No Solyndra, Inc. guarantee of the Senior Debt or the Senior Second Position Debt upon entry into definitive documentation.

Senior Debt - \$300 million:

Tranche A:

- \$75 million at interest rate of 3-month LIBOR plus 600 basis points ~~Investor Debt~~ ("Tranche A") {with warrant coverage pursuant to a to be determined structure acceptable to DOE yet to be determined} (reducing to 3-month LIBOR plus 200 basis points effective December 2012)
 - To be underwritten by Argonaut/Madrone
 - Assumes DOE/FFB commits funding of remaining undisbursed amount of the DOE Guarantee Loan (approximately \$95 million) subject to CP's noted below
 - Pro-rata funding with the DOE from and after December 9, 2010 (provided, however, that fundings in December, 2010 may be deferred until date of January funding by DOE/FFB which is anticipated to be January 10, 2011) upon a written commitment by Argonaut/Madrone to fund the full Tranche A)
- First out in the event of a liquidation event prior to initial scheduled principal payment date (March, 2013)
- Collateral:
 - ~~100% of Equity Interests in Fab 2 LLC and~~ all assets of Fab 2 LLC, including IP, all equipment, agreements, etc. ("Operating Company Collateral")
 - All assets of Solyndra, Inc. (i.e. NOL) ("Holding Company Collateral")
 - ~~Equity interests in Fab 2 LLC~~

Tranche B:

- \$150 million 2.5% DOE/FFB financing (includes approximately \$95 million yet to be funded)
- Collateral:
 - Equity interests in Fab 2 LLC and 100% of all assets of FAB 2 LLC, including IP, all equipment, agreements, etc. ("Operating Company Collateral")
 - ~~Equity interests in Fab 2 LLC~~

Tranche C:

Up to an additional \$75 million ~~investor senior debt~~ financing permitted pari passu in payment with Tranche A and B. Collateral and terms as stated on Tranche A above (except ~~for~~ Tranche C will not receive a first out position in the event of a liquidation event prior to initial scheduled principal payment date), or as to be negotiated by new lenders and acceptable to DOE/FFB.

Payment terms – Tranches A & B, B and C (if applicable):

- Initial principal payment: March, 2013
- Equal quarterly principal payments over 16 quarters
- Final maturity: December, 2016
- PIK interest period: Through December, 2012
- Cash sweep as discussed below under Waterfall
- All prepayments without penalty

Senior Second Position Debt:

- \$385 million DOE/FFB financing (represents amounts previously funded)
 - OID to accomplish the following:
 - \$270 million Initial principal amount, accreting to \$385 million evenly on a quarterly basis over a 12 year period
 - \$175 million existing Convertible Debt
 - OID to accomplish the following:
 - \$80 million Initial principal amount, accreting to \$175 million evenly on a quarterly basis over a 15 year period
 - \$385 million DOE/FFB and \$175 million existing Convertible Debt pari passu in payment and both secured on a pari passu basis in Operating Company Collateral
- Payment terms
 - DOE/FFB OID
 - Principal payments: 24 quarters beginning March, 2017; sculpted so that there is no bullet payment due
 - Final maturity: December, 2022
 - PIK Interest period: Through December, 2014
 - Mandatory redemption requirements:
 - Once total balances in Debt Service Reserve and the Excess Cash Retention Account exceeds 125% of outstanding balance of the DOE/FFB OID
 - Optional prepayment
 - Only with ~~settlement of original principal and accrued interest~~ payment of fully accreted balance of the of the DOE/FFB OID
 - ~~Upon an unsecured payment event of default, all future accretions will be brought forward~~ (i.e. The amount outstanding will be equal to the original face amount less all principal repayments up to the default date)
 - Existing ~~investor~~ Convertible Debt OID:
 - Principal payments: 36 quarters beginning March, 2017; sculpted so that there is no bullet payment due
 - Final maturity: December, 2025
 - PIK Interest period: Through December, 2015
 - Mandatory redemption requirements:
 - Once total balances in Debt Service Reserve and Excess Cash Retention Account exceeds 125% of outstanding balance and only after the DOE/FFB OID facility is fully repaid
 - Optional prepayment
 - Only with ~~settlement of original principal and~~ payment of fully accreted balance of Convertible Debt and all accrued and unpaid interest

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Borrower

Restrictions on Solvndra, Inc. and Fab 2 LLC (without consent of DOE):

- No investment in business activities outside of those directly in support of Fab 2 production and sales
- No dividends to shareholders

- No use of IP outside of the current project
- No Issuance of debt (except for Tranche C as provided for above)
- Other usual and customary restrictions

CPs for December Advance: Usual and customary, plus the following:

- Signed term sheet consistent with terms listed herein
- Signed guarantee agreement from Solyndra, Inc. covering all obligations of Fab 2, LLC (current borrower)
- Commitment to fund into the Liquidity Reserve Account equal to a pro-rata share of DOE/FFB December funding on January 10, 2010
- Construction and equipment supply plan consistent with projections acceptable to DOE and the IE

CPs to Further DOE Advances:

- Construction progress consistent with the construction plan
- Operational spending within a range (tbd) of agreed budget
- Progress on market development to be agreed upon consistent with plan
- Monthly funding into the Liquidity Reserve Account equal to a pro-rata share of each respective DOE/FFB funding to be funded contemporaneously with each such DOE/FFB funding
- No MAE (to be defined consistent with agreed upon operating plan)
- Other usual and customary

Events of Default for Senior Debts:

- Cash Balance of Borrower falls below \$5,000,000
- Other usual and customary

Cashflow Waterfall:

All revenues paid to Borrower into a Revenue Account held by a Collateral Agent. All cash to be held in accounts noted below by the Collateral Agent (except for O&M account), with transfers pursuant to certificates reviewed and approved by DOE on a monthly basis into the following accounts in the following priority:

- First, an amount sufficient to pay budgeted operations and maintenance costs due or reasonably expected to become due within the next month funded into the O&M Account;
- Second, an amount equal to 1/3 of the amount necessary to fund the Debt Service due in the next quarterly period funded into the Debt Service Account;
- Third, an amount equal to the Debt Service Reserve requirement up to a maximum of the next six months of Debt Service (not covered by the Debt Service Account) into the Debt Service Reserve Account;
- Fourth, commencing upon Project Completion, an amount sufficient to replenish the Liquidity Reserve Account such that the account balance is maintained equal to a maximum of \$40 million into the Liquidity Reserve Account
- Fifth, commencing upon Project Completion an amount equal to finance capital expenditures approved by the IE into the CapEx Reserve Account;
- Sixth, 60% of any excess amount to be used to reduce outstanding indebtedness beginning in March 2013 (pro rata among ~~first position~~ Senior Debt (Tranches A, B and C) for as long as any ~~first position~~ such Senior Debt is outstanding)

- Seventh, all remaining cash into the Excess Cash Retention Account

Other indebtedness

- None

Governance:

- DOE/FFB Board observation rights until full repayment of the OID facility
- Intercreditor Agreement: To be discussed

| Solyndra.2010.12.10.1540923.kcc.v.1

Footnote 547

[REDACTED]

From: [REDACTED]
Sent: Sunday, December 12, 2010 3:59 PM
To: Nwachuku, Frances; [REDACTED]
Subject: Solyndra credit paper
Attachments: Solyndra Credit Paper 12-12-10.docx

Here is a first cut at the credit paper. It is still missing the first Section which Frances may want to draft (or at least tell me what she wants in there), as well as the Technical Assessment section. I have left quite a few blanks reflecting data that I did not have at hand. I am hopeful that [REDACTED] can help fill these in. I have also indicated a number places where we need to insert tables or graphs and have spoken with [REDACTED] about filling those in.

Steve

Section 1 – Issue Summary and Requested Action

This should be a very short summary of the issue and requested action. Probably just a few sentences.

Section 2 – Executive Summary

In October, 2009 DOE issued a \$535 million loan guarantee to Solyndra Fab 2, LLC (“Fab 2, LLC”). Fab 2, LLC was to construct a ___ MW photovoltaic panel manufacturing facility in Fremont, CA, using a proprietary process to produce panels to be installed on commercial roofs. The DOE-backed loan was to provide 73% of the capital costs of the \$733 million facility.

Through December, 2010, approximately [\$460] million of the loan has been drawn. Work on Fab 2 has been proceeding according to plan and within the contemplated budget. It is currently expected that the plant will begin producing panels in the first quarter of 2011, and will ramp up to full operations in 2012.

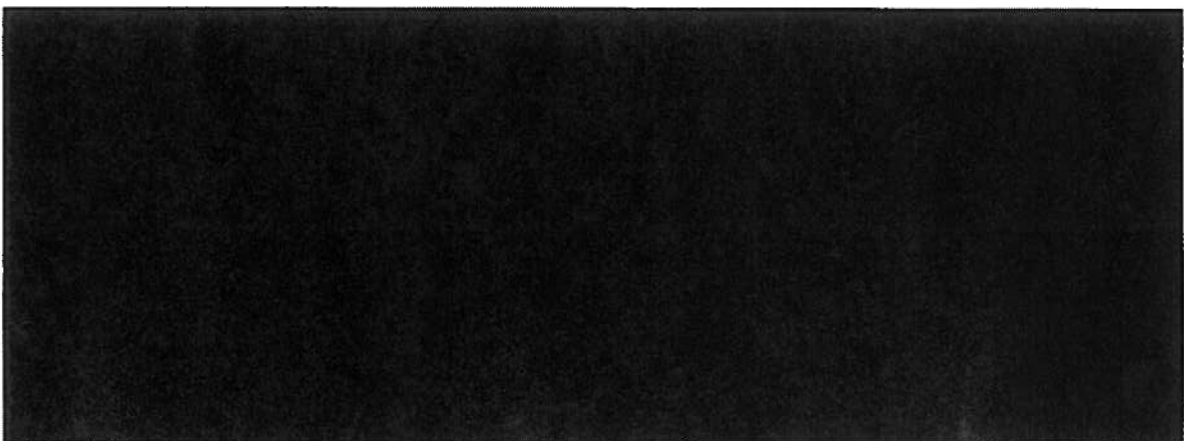
Solyndra, Inc., the parent company, provides key services to Fab 2, LLC through a series of contractual relationships. Key among those are serving as the EPC contractor constructing the Fab 2 facility and the sole off-take counterparty for the sale of Fab 2 panels. Fab 2 will operate under a license for the intellectual property held by Solyndra, Inc.

Due to an inability to raise necessary capital, Solyndra, Inc. is facing severe liquidity pressures. Without the continued funding of the DOE loan, Solyndra, Inc. will run out of cash in a matter of weeks. Even with ongoing DOE funding, the company will need to raise at least \$150 million in new funds in order to reach the point at which cash flow from operations is positive. Absent this additional funding, the company will run out of cash in March, 2011, even if DOE continues to fund its entire \$535 million loan.

To address this crisis, DOE has worked with Solyndra and its primary investors to craft a financial restructuring that the parties believe will begin to bridge the company to profitability. Even if that proves impossible, DOE believes that the proposed restructuring will maximize the possible recovery on its guaranteed loan.

Background on the company’s performance, financial situation and prospects is summarized below. Following that is a brief summary of the analysis undertaken by DOE over the past several weeks and the proposed restructuring plan that is believed to maximize the financial return to DOE.

Solyndra Background



Solyndra began manufacturing panels commercially in its Fab 1 facility in ___, and has produced approximately ___ MW of panels since then. It has sold ___ MW at an average price of \$ ___/watt.

Fab 2 Project and DOE Loan Guarantee

In October, 2009 DOE issued a loan guarantee to Solyndra Fab 2, LLC, a wholly-owned subsidiary of Solyndra, Inc., in the amount of \$535 million. The loan proceeds, along with \$198 million of investor equity, were to be used to construct a new fabrication plant capable of producing an estimated ___ MW of PV panels annually. The facility was to be constructed by Solyndra, Inc. under a fixed-price contract and was anticipated to begin production by _____. The new plant would operate under an IP license from Solyndra, Inc. who would also provide management and operational services pursuant to an agreement. Additionally, Solyndra, Inc. would serve as the customer for all Fab 2 production, which would be purchased at a price equal to the average sales price received by Solyndra, Inc. for sale of all its panels.

The DOE loan guarantee was secured by a first security interest in all of the assets of the borrower, primarily composed of the new building and production equipment. Additionally, the parent was providing an unsecured completion guarantee for construction of the facility.

Through December, 2010 approximately \$[460] million of the \$535 million loan guarantee has been disbursed. Construction of the Fab 2 facility is on schedule and on budget, with first production scheduled for ___, 2011.

Solyndra, Inc. Financial Situation and Proposed Consolidation Plan

Solyndra, Inc. anticipated the need to raise additional capital and filed an S-1 to go public in ___, 2009. They were seeking \$300 million of new capital which they believed would be sufficient to bridge the company until it was cash flow positive from the operations in Fab 1 and Fab 2. They additionally sought to double the size of the Fab 2 facility and submitted a new application to DOE in ___, 2009 to provide a new loan guarantee on terms similar to that for the first loan.

In early 2010 the IPO effort was suspended due to continued degradation in the PV marketplace and investor concerns over Solyndra's ability to compete in that market due to its perceived high costs. In order to continue operations, Solyndra secured a \$175 million convertible loan from existing investors in June, 2010. As of October, 2010 that loan had been totally disbursed.

In early October, 2010 Solyndra management approached DOE to discuss the worsening financial situation and to present a proposed "consolidation plan" that they felt would lead the company to profitability. They described their financial distress as having been caused by the following key factors:

- Overspending, especially in R&D where the total topped \$160 million in 2010
- Lack of investment in sales and marketing, with only ___ sales people employed in Q1, 2010
- A misdirected sales strategy, focused on roofing companies and resellers instead of the more sophisticated developer and integrator market
- An unwillingness to provide competitive forward pricing for their panels, essentially ceding their market to crystalline silicon manufacturers who cut prices by over 30% in 2009.

Due to these factors the company was burning cash and building inventory as it could not sell out production beginning in Q3, 2010. The company projected that it would run out of cash in November if DOE did not fund as scheduled in October. Even with continued DOE funding, the company would run out of cash by March, 2011.

In order to address their problems, the company brought in new management during the summer and fall of 2010. Founder Chris Gronet was replaced as CEO by Brian Harrison, a technology executive who had most recently served as _____. Mr. Harrison brought in a new VP of Marketing _____ who previously had worked at ____, ___ and _____. The sales team was significantly enhanced through the hire of _____ the former ___ of _____ who took over North American sales, and the total sales

force was increase to ____ people. The company also developed a consolidation plan with the following key features:

- Fab 1 would be shut down, with key CIGS deposition equipment and other tools transferred to Fab 2 where they could be operated more efficiently
- DOE would receive security in all the assets of Solyndra, Inc., including the IP and contracts necessary to run the business
- DOE would continue to fund its \$535 million, and would further agree to a suspension of interest and principal payments until Q2. 2013 in order to conserve cash
- Solyndra would raise \$150 million in additional equity to fund the projected shortfall in operating cash flows through early 2012.

DOE agreed to study the plan and undertook due diligence on the technical, financial and market assumptions that underlie its plan. DOE funding took place as scheduled in October and November, 2010 as this due diligence was completed.

DOE Assessment of Solyndra Viability and the Consolidation Plan

Fortunately, the LGPO origination team had recently begun a review of the Solyndra application for the expansion of the Fab 2 facility and had received initial drafts of independent engineer and market reports. These reports were carefully reviewed by both the financial and technical teams at DOE. Based on that review as well as extensive discussions with management, DOE believes that the Solyndra's product is ideally suited to certain PV installations and that the company should be able to profitably produce and sell that product.

More specifically, on the technical side, DOE has concluded that:

List things here

With respect to the market for Solyndra's product, DOE believes that:

- Solyndra's product is ideally suited to white rooftops, especially those that have weight-bearing constraints where no other product can compete.
- The total size of the target market is large, and even at full operation Solyndra's market share will be between 2% and 7.5% of white commercial rooftops.
- Solyndra's unique form factor, light weight and ease of installation should allow it to command a premium price over crystalline silicon panels. Market consultant Navigant Consulting Inc. ("NCP") believes this premium should range between \$.70/watt to more than \$1.50/watt, depending on the efficiency that the Solyndra panels can achieve.
- The new marketing approach which is targeted towards large solar developers, integrators, energy service providers and utilities is more likely to be successful than the previous attempts to sell through channels. It will require, however, a significant increase in marketing and sales costs.
- Rebuilding the sales pipeline will take several months, and the outcome must be considered uncertain until it can be demonstrated that Solyndra has successfully combated negative market perceptions and customers believe it is capable of providing competitively priced products.

Incorporating the technical and market conclusions noted above has led DOE to believe that the company can profitably produce and sell its product. Specifically:

- 

• [REDACTED]
• [REDACTED]

Based on this assessment, DOE believes the Consolidation Plan is the appropriate approach to resolve Solyndra's financial crisis, provided that additional capital can be secured to help bridge the company to positive cash flow. DOE therefore engaged the company and its investors in designing a financial restructuring plan to achieve that objective.

Proposed Financial Restructuring

Concurrent with the DOE discussions, Solyndra engaged Goldman Sachs to help raise the \$150 million of additional capital needed to fund operating cash shortfalls through Q1, 2012. Goldman's fundraising efforts have not been successful to date. An attempt to engage strategic buyers proved unsuccessful due to their unwillingness to commit the substantial resources that would have been involved to evaluate a company that appeared highly risky. Financial investors were somewhat more open to consider investing, but most rejected the opportunity due to the view that the company faced substantial competition from other technologies and that the significant debt load (\$535 million of DOE/FFB debt and \$175 million of investor convertible debt) presented too much of a hurdle in any foreseeable liquidation or sale.

In light of the lack of response from new investors, DOE considered three possible courses of action:

1. Cease funding the loan and force the company into bankruptcy. As detailed in Section 6, Financial Plan and Projections, this would result in an estimated recovery of between \$50 million - \$100 million, or a recovery rate of between 11% and 22%.
2. Continue funding as scheduled. This would allow the company to continue operations for an addition 3 months, and would allow it to begin the installation of Fab 1 equipment in Fab 2 as contemplated under the Consolidation Plan. It would not, however, allow completion of the Fab 2 facility, nor would it allow DOE to secure access to the important IP and other Solyndra, Inc. collateral which would allow it to liquidate the company as a going concern.
3. Negotiate with current investors to facilitate the transfer of collateral contemplated under the Consolidation Plan and, ideally, secure the required \$150 million of additional funding. This would significantly enhance DOE's security and recovery percentage under a forced liquidation and could, if properly funded, result in a successful future for Solyndra.

In early December DOE entered into intensive negotiations with Solyndra and its primary investors to establish mutually agreeable terms under which DOE could secure its desired collateral and the investors would commit to additional funding. The result of these negotiations is the proposed restructuring plan summarized below and discussed in more detail in Section 6.

Under the proposed restructuring the existing investors would commit to fund an additional \$75 million, an amount sufficient to carry the company through the second quarter of 2011. This would permit the completion of Fab 2 and would allow the company to demonstrate the viability of its new marketing approach. Assuming successful completion of these two items, DOE has estimated that its recovery percentage would increase to between 23% - 42%, based on a going-concern estimate and the restructured financial plan discussed below.

In return for the investor \$75 million, DOE would agree to fund the remaining [\$75] million of its loan commitment. The new investor \$75 million would rate pari-passu with DOE senior debt, and would

receive a first payment preference in liquidation if the company faced a forced sale prior to March, 2013. On this first senior tranche, DOE would retain a total of \$150 million in capital. An additional \$75 million could be further funded into this first senior tranche by existing or new investors, but it would not share in the first-out payment preference noted above. The first senior debt tranches have a period of PIK interest and principal deferral in order to conserve cash

The remaining \$385 million of DOE/FFB debt, as well as the \$175 million of investor convertible debt would take a second senior position. Both these amounts would convert to an original interest discount security in order to reduce the face amount prior to maturity. DOE's piece is to be discounted 30%, while the investor piece is discounted 55%. Both pieces have interest rate capitalization and deferred principal payment periods, though the DOE loan is scheduled to receive interest payments and principal payments in advance of the investor loan.

A number of other provisions provide for close control over spending as well as cash sweeps and traps to facilitate the early repayment of both the first senior secured debt as well as the second senior secured debt.

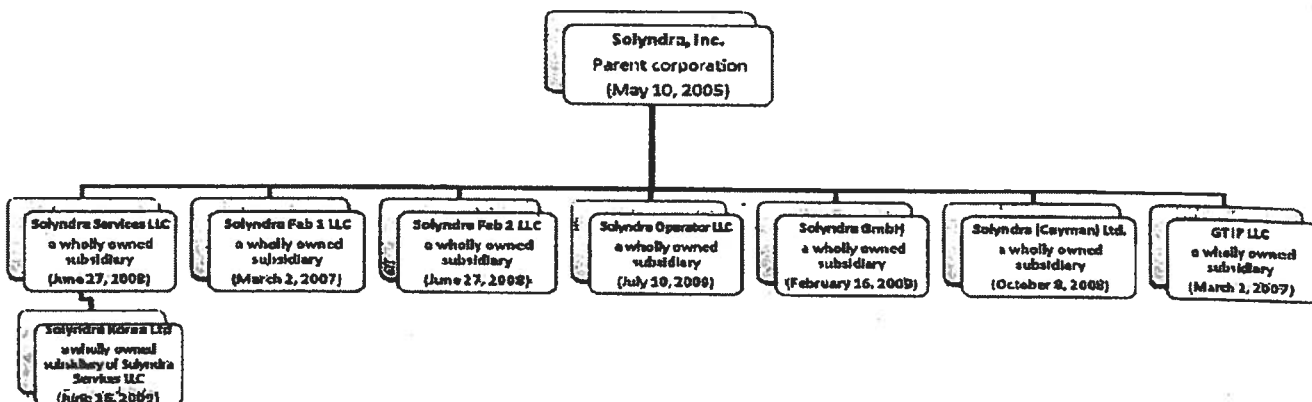
As detailed in Section 6, this new structure accomplishes several objectives. First and foremost, it secures all funding necessary to complete Fab 2 and build the required sales pipeline. Second, it gives DOE the collateral necessary to liquidate on a going-concern basis if that becomes necessary, significantly improving the projected recovery rate. Third it substantially improves the company's (and DOE's) bargaining position with respect to any new equity investments that will be required. If the company performs as anticipated over the next six months, it should make that capital raise far more competitive, resulting in far fewer accommodations being required of DOE or the investor group.

DOE believes that the restructuring plan discussed in this document represents the best possible course of action to achieve the highest return on its invested capital. Based on the technical, market and financial analysis undertaken, DOE believes that it is reasonable that its full investment can be recovered if this plan is implemented, and therefore recommends its adoption.

Section 3 – Company and Project Background

The DOE loan guarantee issued in October, 2009 was used to support the construction of Solyndra's Fab 2 facility. The Borrower under the loan agreement was Solyndra Fab 2 LLC., a special-purpose subsidiary of Solyndra, Inc. The transaction was largely structured as a non-recourse project financing, with the relationship between parent and subsidiary governed principally through a series of contracts. Figure 3-1 below shows the organizational structure of the Solyndra family of companies as it existed at loan closing.

Figure 3.1
Solyndra, Inc. Organizational Structure



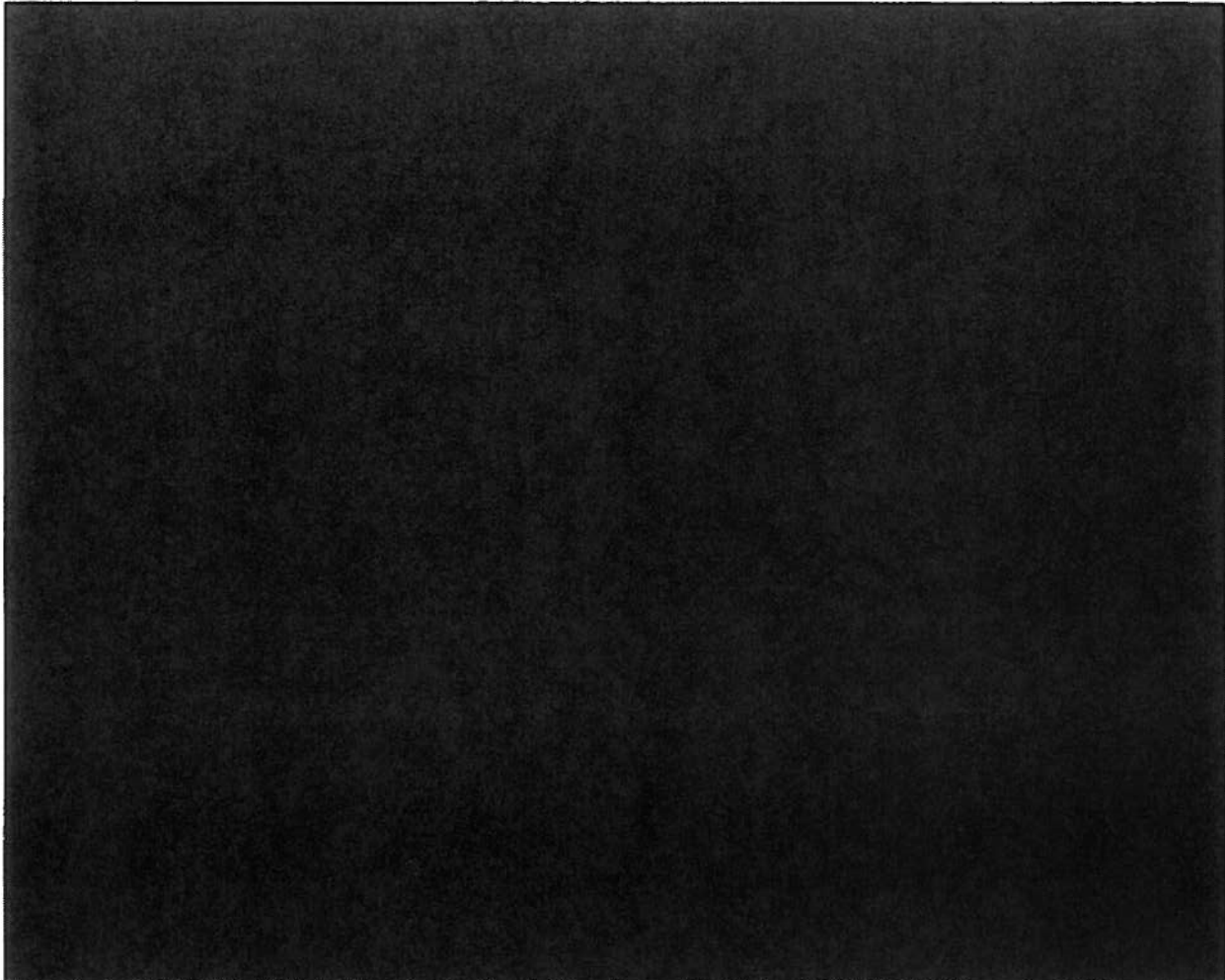
In brief, Solyndra Fab 2 LLC was responsible for building and operating the Fab 2 facility which was to be financed, in part, by the DOE loan guarantee. Construction of the facility was to be performed by Solyndra, Inc. under a fixed-priced contract. The parent was therefore taking the risk of construction cost overruns, as well as the benefit of any construction savings that might occur. Once operational, Solyndra, Inc. was also obligated to buy all Fab 2 output at a price equal to the average price received by the parent for sales of all solar panels, whether from Fab 1 or Fab 2. Under the terms of the agreement, Solyndra, Inc. would be taking the risk of selling out the production; they would be required to pay the project company regardless of whether they were able to sell the output to customers.

The DOE loan guarantee of \$535 million was approximately 73% of the total anticipated project costs. Table 3.2 below summarizes the financial plan as contemplated in the original transaction. To minimize completion risk, all equity contemplated under the financial plan was required to be raised prior to closing. A summary financial plan is shown in Table 3.2 below.

Table 3.2
Financial Plan

(From Exhibit A1 to Common Agreement)

SOURCES		
Debt		



Note: Base Project Costs of \$755,000,000 include Overall Contingencies and are equal to the estimated Total Project Costs. All Base Project Costs are Eligible Costs; there are no Ineligible Project Costs.

Through December, 2010, approximately \$[460] million of the \$535 million guaranteed loan amount has been disbursed.

As is evident from the previous discussion, while the loan was structured as a stand-alone project financing to the subsidiary company, there was a significant amount of counter-party risk with the construction, sales and operating contracts tied back to the parent. Critically, in order to meet ongoing operational cash flow requirements at the corporate level (including those costs associated with completing and operating Fab 1), the company would be required to raise additional equity capital.

In Q4, 2009 the company filed an S-1 to go public, through which they anticipated raising \$[300] million in new capital. The IPO effort was suspended in ____, 2010 due to continued degradation in the PV market and concerns over Solyndra's market position. In June, 2010 Solyndra secured a \$175 convertible loan from its existing investors to cover ongoing operating costs. By its terms, the loan was scheduled to mature on 12/1/2010. As of October, 2010 that loan had been totally disbursed.

Progress on the construction of Fab 2 has remained on budget and ahead of schedule. The parent's financial position has continued to worsen, however. As of December 4, 2010, the company had \$27

million of cash on hand, with accounts payable of \$41 million and accounts receivable of \$27 million. For the time being, the company is dependent on continued funding of the FFB loan in order to remain solvent.

It became evident in Q3, 2010 that the parent's financial position was untenable. Poor sales performance and ongoing investment by the Chinese in c-Si manufacturing were making it impossible for the company to raise new equity. By October, the convertible loan had been fully drawn, cash reserves had dwindled and weekly cash burn still averaged \$10 million. Q3 sales had dropped to only ___MW while inventory grew to ___MW. Solyndra approached DOE with a proposal to restructure the loan guarantee, under which repayment of interest and principal would be deferred. Additionally, Fab 1 would be shut down, with key processing equipment being transferred to Fab 2, thereby providing additional cash to the parent to fund operations. In return, DOE would receive a first security interest in all assets of the company. This proposal is discussed fully in Section 6.

Management Changes

In [July], 2010, the Board of Directors announce the appointment of Brian Harrison as the new CEO, replacing company founder Chris Gronet who would remain on the Board of Directors and as the chief scientist of the company. Harrison came from ___, where he served as ___. In announcing the change, the Board signaled that it would be focusing on cost reduction, manufacturing improvements and, importantly, a revised marketing and sales program. In the subsequent 4 months, additional management changes were made, including the hiring of [REDACTED] as head of North American sales. Short bios of current company management are attached as Appendix ___.

Current Situation

As of December 10, 2010, the company's positioned can be summarized as follows:

- Construction of Fab 2 remains on schedule. Commissioning of key equipment [specify] has commenced and initial production is scheduled for [January], 2011.
- Shut-down of Fab 1 has begun, with key equipment being transferred to Fab 2 beginning December __, 2010 and ending January __, 2011.
- Sales in Q4 appear to be below plan, though the company is expecting strong December sales to reach [12] MW, compared to [] MW in Q3.
- Finished goods inventory will reach approximately __ MW by year-end, with the expectation that Q1 sales will reduce that amount to __ MW.
- The company has announced its Consolidation Plan and has indicated the intention to lay off 200 temporary and permanent workers. These layoffs will begin after the first of the year.
- The company should end the year with a cash balance of approximately \$18 million.
- A minimum of \$150 million in new equity will be required to bridge the company until it can operate with positive cash flow, expected in Q1, 2012. Even with ongoing DOE loan funding, new cash will be required by March, 2011.
- The company has engaged Goldman Sachs who has been trying to raise equity since October. Efforts to attract a strategic investor were fruitless, with the current focus on financial investors. To date, no potential investor has come forward with a proposal acceptable to either DOE or the existing Solyndra investors.

Section 4 – Technical Assessment

Need from [REDACTED]

Section 5 – Market Issues

PV Market Overview

The global PV market was approximately 7.9 gigawatts in 2009 and is expected to grow approximately 55% to 12.3 GW in 2010. Over 75% of PV sales occur in Europe, with North America accounting for less than 8% of installations. The commercial roof-top market served by Solyndra is expected to be between 3.3 GW and 4.6 GW, or about 35% of total PV shipments. Market advisor NCI estimates that approximately 82% of PV panels sold will be the traditional crystalline silicon technology. Thin film technologies account for the remainder, with Cadmium Telluride (the technology employed by market leader First Solar), accounting for the vast majority of that segment. CIGS, the technology utilized by Solyndra, will account for about 1% of all PV sales.

Since 2004, the PV market has grown at a compound growth rate of approximately 50%. NCI projects that market growth will range between 17% - 40% annually from 2010 to 2014, and between 5% - 15% for the subsequent five years. This results in demand of between 37 GW and 96 GW in 2019. Driving this significant variability in expectations are a few key variables, namely the rate of economic growth, the continued existence of substantial government incentives for solar power (especially in Europe), improvements in PV efficiency (with a consequent reduction in pricing) and, ultimately, cost competitiveness between PV and conventional fossil technologies.

NCI projects that commercial rooftop solar installations will increase from approximately 4 GW in 2010 to between 8 GW and 31 GW in 2019. They estimate that perhaps 50% of that total will be on the white roofs required by Solyndra's panel technology. Assuming a long-term manufacturing capability of approximately 300 MW in Solyndra's Fab 2 facility, that translates to a required market share of between 2% and 7.5% of the total available market in 2019.

The PV market continues to be characterized by significant over-supply of manufacturing capacity relative to demand. Depending on final shipment levels, capacity utilization in 2010 should range between 50% and 70%. This excess capacity has resulted in continued pressure on pricing as solar developers have been able to pressure suppliers to aggressively compete on pricing.

PV Pricing

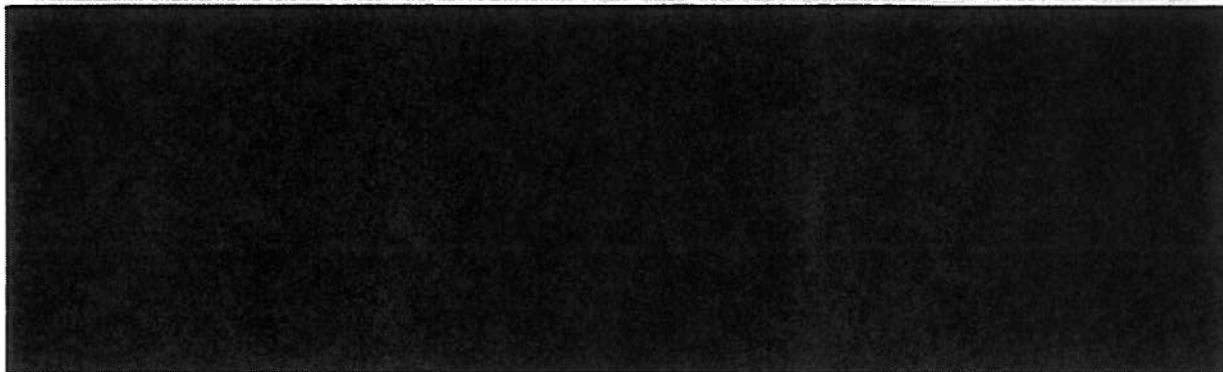
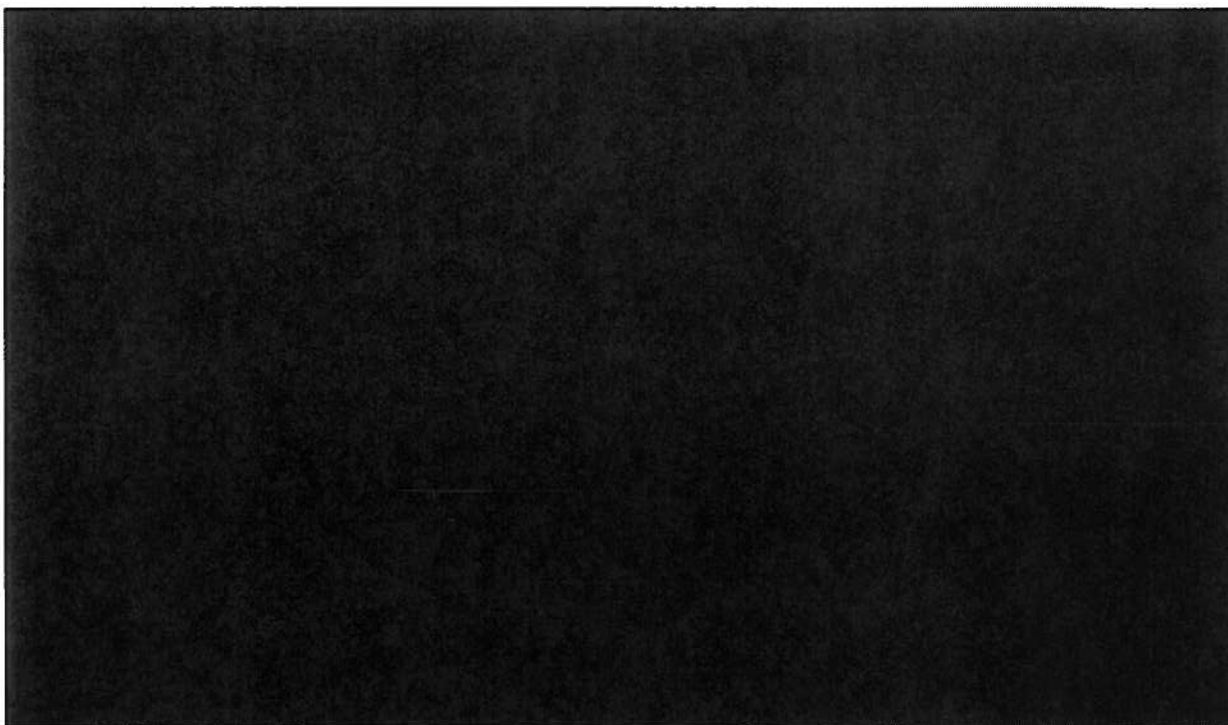
Since 2007, PV module pricing has fallen by approximately one-half, from just under \$4.00/watt to about \$2.00/watt in 2010. The drop in pricing was especially rapid between 2008 and 2009 as new polysilicon cell manufacturing capacity came on line; in the past year prices have dropped only 10% or so.

NCI projects that c-Si pricing will continue to drop as manufacturers become more efficient and new, lower-cost facilities come on line. They expect the price/watt to drop to approximately \$1.50/watt by 2013 and \$1.00/watt by the end of the decade.

When considering alternative panel technologies and suppliers, PV customers will consider not just the cost of panels, but the total installed system cost as well. On the whole, crystalline silicon panels continue to set overall pricing levels as they are the dominant technology in both the rooftop and ground-mount market segments. Thin film panels tend to price off c-Si with appropriate adjustments for relative panel efficiencies and balance of system costs. Thus, for example, Cd-Te panels with an efficiency of approximately 11% will sell between \$.20/watt and \$.30/watt less than c-Si panels with an average efficiency of between 14% and 15%.

The more sophisticated PV customers consider not just the installed all-in cost of alternative PV systems, but the overall cost of installing and operating those systems over the expected lifetime as well. This calculation, the levelized cost of energy ("LCOE"), computes the total capital and operating cost of a project on a discounted present value basis, ultimately deriving a cost per kWh for competing systems. Technologies with higher panel efficiencies that are better at converting sunlight to electricity over a wide range of solar insolation conditions will tend to fare better under this analysis. More specifically, Solyndra's cylindrical design which can capture sunlight from a variety of angles will benefit from this calculation.


Solyndra's Competitive Position








Solyndra Sales Strategy

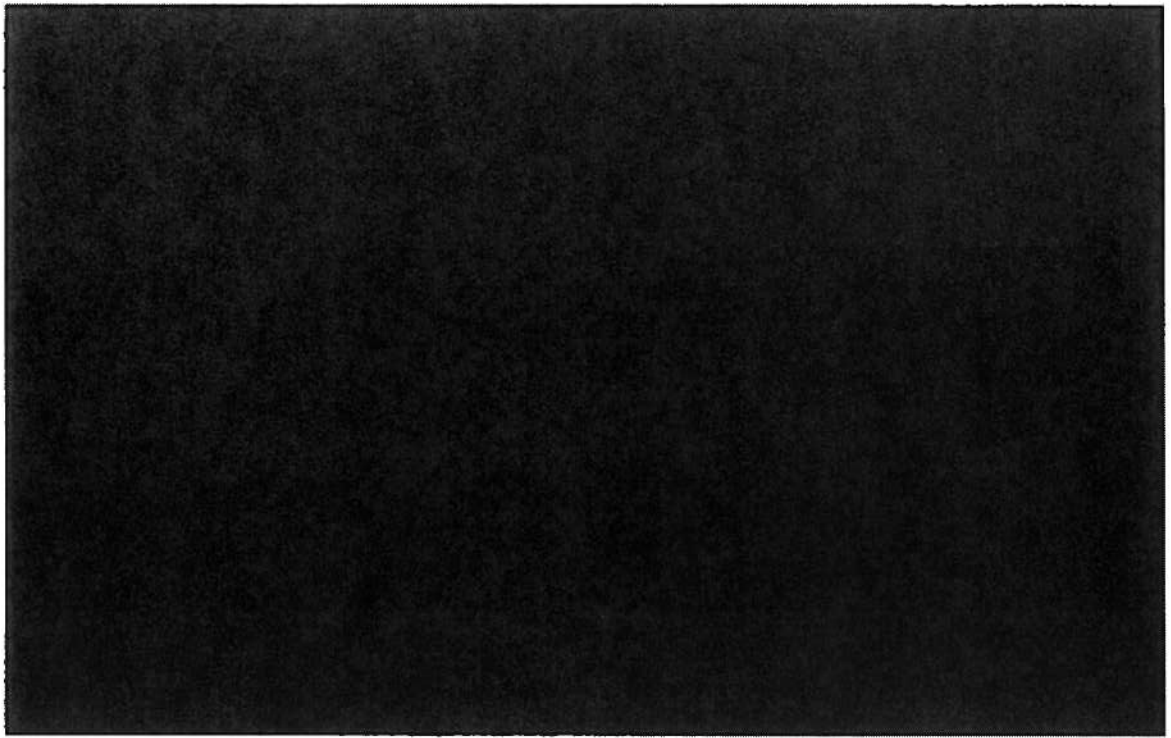
During its first year of production Solyndra relied almost exclusively on selling its output to resellers and roofing material manufacturers. In essence, they relied on the sales forces of these customers to create market demand. In hindsight, this strategy was faulty; resellers did not have the technical skills or interest in pushing this non-traditional product. Successful placement of the Solyndra system requires detailed technical analysis and a sophisticated sales team in order to explain the balance of system and electricity yield benefits of the unique form factor incorporated in the product.



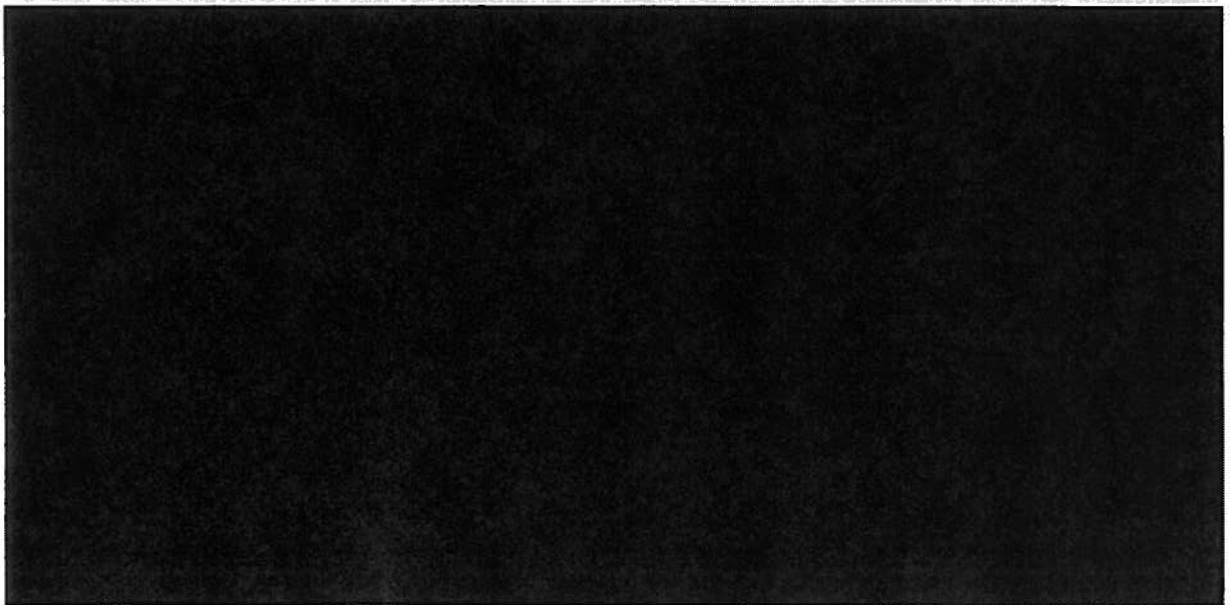
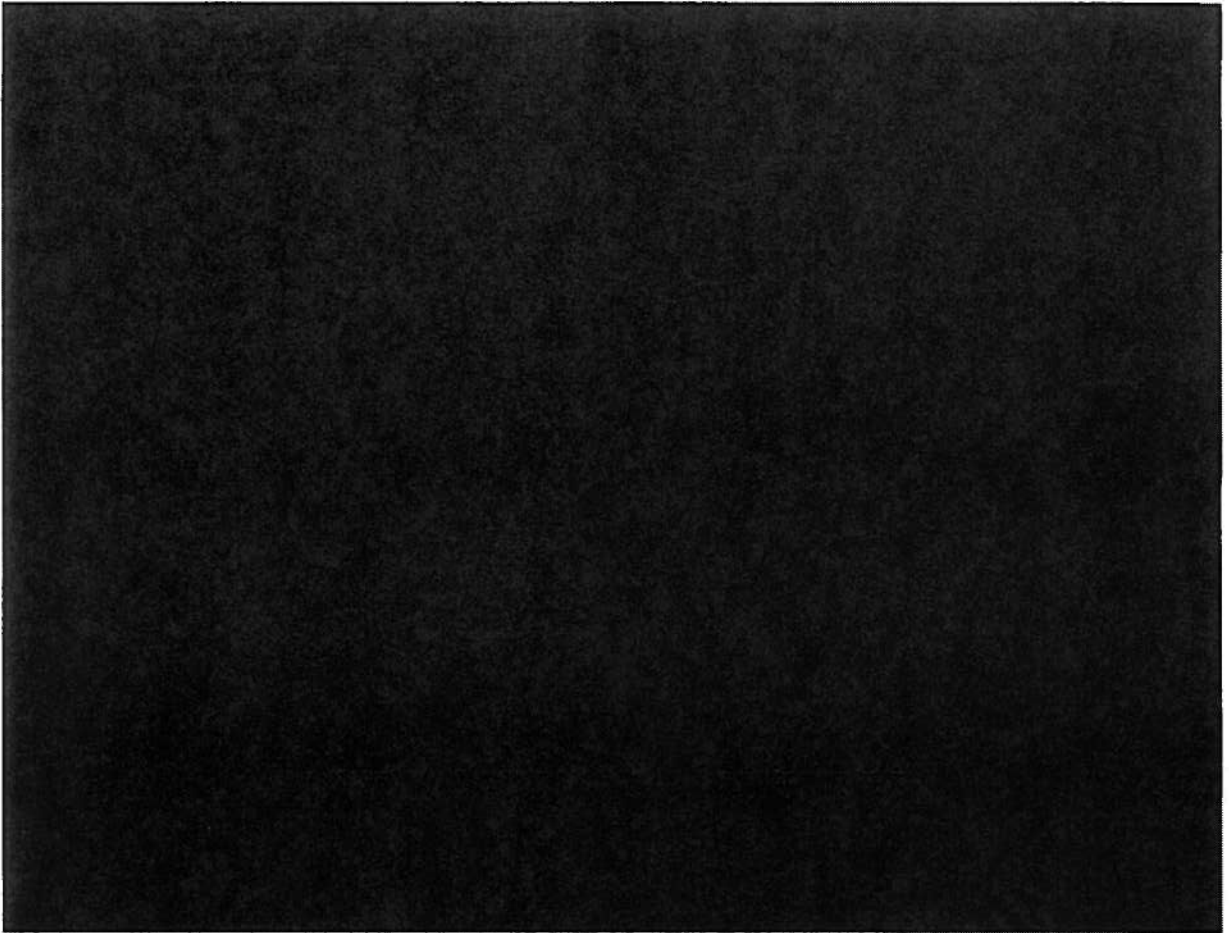
New management brought in by the Board of Directors quickly focused on the sales problems and implemented a new strategy to more effectively build a pipeline and re-establish the market acceptance of Solyndra systems. They acknowledge that lack of focus on end-users and poor pricing decisions virtually decimated the sales pipeline. The results of these decisions continue to be felt since system design and purchase decisions often take 6-12 months before they result in actual product shipments. Thus, the results of changes being implemented in Q3 and Q4, 2010 will only be known in the second half of 2011.


In short, the company has significantly increased its sales force (going from  to  by the end of 2010), and is now focused on selling to energy service companies, project developers and large integrators who have the time and sophistication to understand the value proposition offered by the Solyndra product. Additionally, they are developing a direct to end-user sales approach which will focus on utilities, real estate companies and public sector buildings, markets which could result in large-scale installations, especially in the United States. Most importantly, the company has recognized the need to be price-competitive and is offering forward-based pricing predicated on the expected price levels of c-Si panels.





Section 6 – Financial Plan and Projections





Based on its review of key drivers of Solyndra's model, DOE feels that the long-term business plan continues to be viable, provided that the company is able to achieve the near-term liquidity necessary to bridge to the expected positive operating cash flow in 2012. Consequently, DOE concludes that the way to maximize the recovery of its investment is to facilitate a financial restructuring of the company to allow it to achieve profitability or, at a minimum, to increase its recovery percentage in a forced liquidation.

Proposed Restructuring – Rationale and Design

In light of the financial crisis, DOE undertook an effort to assess the value of Solyndra under a variety of scenarios. As noted above, as a going concern, the Solyndra Fab 2 facility should be able to generate approximately \$200 million of EBITDA annually. Currently, publicly traded PV companies trade at a level of between 8x and 12x EBITDA, implying a potential long-term value of the company of, perhaps, \$2 billion.

The short-term assessment, however, is much more strained. Absent continued funding of the DOE loan as well as the contribution of at least \$150 million in new capital, the company faces bankruptcy. In a bankruptcy scenario, DOE would have to look to its collateral for any potential recovery. Today, that

collateral consists of the completed Fab 2 building and the subset of Fab 2 equipment that has been delivered to the site.

The land acquisition and construction costs of the new building total about \$60 million. While it is not clear what the structure designed for Solyndra's manufacturing processes could bring on an open market sale, it is unlikely that it would exceed its cost. More realistically, one could assume a liquidation value of the structure at, perhaps, 50% of the incurred cost.

Approximately \$[200] million of the Fab2 equipment has been delivered to the site. Most of this equipment is highly customized for Solyndra's unique manufacturing processes and therefore has limited value in resale. Based on input derived from studies of other PV manufacturing equipment, DOE estimates that the equipment could have a salvage value of perhaps 10% - 20% of original cost.

In sum, the current liquidation value of the DOE collateral is estimated at:

	Original Cost	Liquidation %	Liquidation Value
Building	\$60 million	50% - 100%	\$30 mm - \$60mm
Equipment	\$200 million	10% - 20%	\$20 mm - \$40 mm
Total	\$290 million		\$50 mm - \$100mm

Through December, DOE has advanced \$[460] million of its \$535 million commitment. At a liquidation value of between \$50 million - \$100 million, that implies a recovery rate of between 11% and 22%.

As detailed below, the proposed restructuring plan will significantly enhance DOE's collateral position by giving it access to not just the Fab 2 assets, but to all of the corporate assets as well. This includes IP, third-party contracts and access to the operating and management team. As a result, DOE can look to a going-concern scenario in the event of liquidation instead of simply a salvage sale of equipment. This going concern valuation is further enhanced once Fab 2 is completed in the second quarter of 2011.

As discussed earlier, one way to estimate enterprise value of a going concern is by evaluating trading multiples of comparable companies. Unfortunately, Solyndra's lack of positive earnings currently makes this estimate impossible. One can look at projected earnings to make such an estimate, though the results in Solyndra's case must be considered carefully.

Forward trading multiples for PV companies range between 6x and 10x year-ahead EBITDA. Given the lack of earnings history, it is prudent to discount this factor for Solyndra, say to 3x-6x EBITDA. With a projected EBITDA of \$60 million in 2012, this would put the enterprise value at between \$200 - \$300 million in 2011.



Thus, at a concluded going concern value of between \$200 million and \$300 million in 2011, the recovery percentage on the DOE investment of \$535 million is between 37% - 56%. Under the proposed restructuring plan, which allows new investor capital of \$75 million to be recovered first in a forced liquidation, the DOE recovery percentage is reduced to between 23% - 42%.

Proposed Restructuring Plan

As discussed above, DOE believes that the long-term financial viability of Solyndra is reasonable, and as such it should be able to recover its full investment. Even if the current plan is not fully realized, DOE believes that having access to the full collateral package enhances its ability to liquidate the company as a going concern and therefore realize substantially more value than just a salvage sale. Based on those assessments, DOE has worked to construct a financial restructuring plan that will allow the company to continue to operate, at least until the facility is constructed and it has had an opportunity to deliver on its new sales program.

To reach that point in mid-2011, the company needs continued funding of the DOE loan and at least \$75 million of new investor capital. Ideally, this new investor capital would come from existing investors who have the most to gain from continued operations and are already committed to the company and its new plan. To that end, DOE worked with Solyndra management and the two primary investors, Argonaut and Madrone, to create the restructuring plan described below.

Currently, Solyndra, Inc. is capitalized by approximately \$__ million in equity and \$175 million in convertible debt. The invested equity has no value, and the debt is convertible into \$50 million of equity. Solyndra Fab 2, LLC (the DOE Borrower) will be capitalized in a total amount of approximately \$733 million, of which 73% is DOE-guaranteed debt and the remainder is sponsor equity.

Under the proposed restructuring, virtually all assets of Solyndra, Inc. will be transferred to Fab 2, LLC. (Solyndra, Inc. will retain approximately \$750 million of NOLs which have value principally to the current investors.) The new capital structure will be:

Senior Secured Debt: Secured by all assets and equity interests in Fab 2, LLC (including IP, all equipment, contracts, etc.). PIK interest period from restructuring date through December, 2012. First principal payment due March, 2013, with 16 equal principal payments until maturity. 60% cash sweep applied quarterly as mandatory prepayment. All prepayments without penalty. Divided into 3 tranches:

- **Tranche A:** \$75 million of incremental investor debt (Madrone, Argonaut and possible others)
 - Interest rate: Libor plus 600 bps, reducing to Libor plus 200bp at December, 2012
 - Funding: Pro-rata with remaining DOE funding
 - Liquidity rights: Payment priority from proceeds in event of forced liquidation before first scheduled principal payment date (March, 2013)
 - Additional security: Assets of Solyndra, Inc. (NOLs)
- **Tranche B:** \$150 million of DOE/FFB financing (including \$95 million funded December 2010 through June 2011)
 - Interest rate: FFB interest rate (approximately 2.5%)
- **Tranche C:** Up to an additional \$75 million of new investor debt
 - Pari-passu and same collateral and terms as Tranche A, but no priority payment from proceeds in the event of liquidation prior to initial scheduled principal payment date

Senior Second Position Secured Debt: \$560 million of previously funded capital (\$385 million of DOE/FFB Fab 2, LLC debt and \$175 million of investor convertible debt). OID discounting incorporated as described below:

Terms	DOE/FFB OID Tranche	Existing Investor OID Tranche
Tenor	12 years	15 years
Principal payments	24 quarters, beginning March, 2017	36 quarters beginning March, 2017

Final maturity	December 2022	December, 2025
OID discount	30% to \$270 million, accreting to \$385 million evenly on a quarterly basis over 12 year term	55% to \$80 million, accreting to \$175 million evenly on a quarterly basis over 15 year period
Interest rate		
PIK interest period	Through December 2014	Through December 2014
Mandatory redemption	Once total balance in retained cash reserve accounts exceeds 125% of outstanding balance	None
Optional prepayment	Original principal and accrued interest	None
Payment event of default	All future accretion brought forward in uncured payment default	All future accretion brought forward in uncured payment default

Appendix A contains the business terms agreed to by the parties that underlie this restructuring. In addition to the structure described above, the terms contain various other provisions designed to protect the noteholders, including conditions precedent to advances, strict control of cash via a project finance waterfall, restrictions on outside activities, and cash sweeps and traps.

While the proposed restructuring reflects some movement from DOE's current senior secured position in Fab 2, it contains several positive features that enhance the value of DOE's investment. These include:

- A first security interest in the IP, equipment, agreements and operating infrastructure that currently sit in the parent company. As noted earlier, the control over these assets significantly enhances the value of collateral by allowing sale as an operating enterprise.
- The critical infusion of \$75 million of new capital. This additional contribution will allow the completion of Fab 2 and provide an opportunity for the company to demonstrate their ability to deliver on the new sales program.
- Alignment of interests with the current investor group. By sharing a common collateral position, DOE (with \$535 million invested) and the current investors (with almost \$1 billion invested) now share a common interest in how to resolve the business problems
- An improved bargaining position vis-à-vis new investments. The company attempted to raise \$150 million in new capital in order to fill the projected funding gap. Investors were unwilling to make that investment on reasonable terms, given their view of the industry and company operations. By securing the existing investor contribution of \$75 million, the pressure to secure funding on the extreme terms discussed is eliminated. If, as anticipated, the company is able to complete the facility and fill its sales pipeline by Q2, 2011, the market for new capital will likely be more competitive. Indeed, existing investors may find it advantageous to make the investment themselves in order to maintain control and avoid further dilution of their position.

It is anticipated that documenting the proposed restructuring will take 4-6 weeks, allowing a financial closing by the end of January, 2011.

Financial Projections Assuming Proposed Restructuring Plan

Table ___ below summarizes the financial projections based on the Solyndra project model and the proposed capital plan. It assumes that an additional \$75 million of investor debt is raised (Tranche C) on the terms noted above. As indicated in the table, senior debt service coverage averages slightly over 3x, and the senior tranche is paid off in Q1, 2015, just over two years from the first principal payment date. Cash sweeps are then applied to the DOE/FFB OID tranche so that it is paid off by ____, some ___ years prior to the scheduled maturity date.

Insert Table Showing:

- Revenues
- COGS
- Overhead Expenses
- EBITDA
- Senior interest
- Senior principal
- OID interest
- OID principal
- Ending balances on each piece of DOE debt
- Total DSCR

Footnote 550

[REDACTED]

From: Richardson, Susan
Sent: Monday, December 13, 2010 7:55 AM
To: [REDACTED]
Subject: Re: Solyndra - Davis Bacon - PRIVILEGED LEGAL COUNSEL

No. Just minor editing

----- Original Message -----

From: [REDACTED]
To: Richardson, Susan
Cc: [REDACTED]
Sent: Sun Dec 12 17:34:18 2010
Subject: RE: Solyndra - Davis Bacon - PRIVILEGED LEGAL COUNSEL

Fine with me -- but I'd like to review before final. Does what I got from you in today's email reflect M&F's input? (Haven't opened it up yet.)

Thanks.

-----Original Message-----

From: Richardson, Susan
Sent: Saturday, December 11, 2010 8:19 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Solyndra - Davis Bacon - PRIVILEGED LEGAL COUNSEL
Importance: High

[REDACTED] I have now been through the letter (while waiting for the man to come and restore our heat....). I would like to put this into a form that is more customary for addressing a default under a loan agreement - most likely a letter from Solyndra setting out the facts (generally as you have recited them) and requesting that DOE permit the next Advance notwithstanding the default; and a reply from DOE making clear that we are not waiving the default, but will fund the next advance [and forebear for [15 days] from exercising other remedies based on the default] on the conditions set out in your letter. I propose to ask our outside counsel - Morrison and Foerster - to prepare the drafts, unless you have some objection? Thnx

-----Original Message-----

From: [REDACTED]
Sent: Friday, December 10, 2010 9:18 PM
To: Richardson, Susan
Subject: Re: Solyndra - Davis Bacon - PRIVILEGED LEGAL COUNSEL

We assumed you would prefer it to come from you. I could sign it - come to think of it, GC63 has the programmatic responsibility for DBA generally for the Dept. Or, your CO type responsible for disbursements could sign it. My overriding concern in suggesting you do it was really, frankly concern abt not stepping on your/LGP toes. Also, the more I mulled, the less I wanted this to look like a quid pro quo situation.

Are you otherwise ok with it? Make what changes you need. I picked the schedule to look aggressive, while cutting them some slack. We were running traps at a clear remove from DOI and came to the clear conclusion that - given the clear absence of any intent by Solyndra to defraud or deceive - we're safe if it's clear we're pushing them. If you can live with this,

I think that would be good. If it ends up being a huge problem as the situation unfolds, we can still work with them.

What a great 48 hours.

----- Original Message -----

From: Richardson, Susan

To: [REDACTED]

Sent: Fri Dec 10 18:46:46 2010

Subject: FW: Solyndra - Davis Bacon

[REDACTED] I have not had an opportunity to review this; but am not sure why you have set it up to come from me? I do not have delegated authority for the LGP and David Frantz is typically the signatory on agreements and significant correspondence re our loans. I'm not sure what about Davis Bacon - as opposed to other enforcement issues we may have - would require that this come from me. Pls let me know what I am missing. Thnx

-----Original Message-----

From: [REDACTED]

Sent: Friday, December 10, 2010 6:27 PM

To: Richardson, Susan

Cc: [REDACTED]

Subject: FW: Solyndra - Davis Bacon

Importance: High

FYI - I haven't had an opportunity to review. Ken

[REDACTED]
Loan Guarantee Program
J.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585
[REDACTED]

-----Original Message-----

From: [REDACTED]

Sent: Friday, December 10, 2010 5:12 PM

To: [REDACTED]

Subject: FW: Solyndra

Importance: High

She is leaving in around 20-30 minutes, I will be here for another 60-90 minutes. This shouldn't go out of DOE yet. Thanks.

-----Original Message-----

From: [REDACTED]

Sent: Friday, December 10, 2010 5:08 PM

To: [REDACTED]

Subject: Solyndra

Importance: High

[REDACTED] please work with [REDACTED] on this. [REDACTED]

[REDACTED]
Acting Assistant General Counsel for
Labor and Pension Law
U.S. Department of Energy
[REDACTED]

[REDACTED]

From: Richardson, Susan
Sent: Monday, December 13, 2010 9:21 AM
To: [REDACTED]
Subject: RE: Solyndra Davis Bacon

I expect we could be more limited and say we are waiving the CP only and reserve all other rights. If we are forbearing for 30 days, w shld make clear it is contingent on their using all reas efforts to come into compliance during that period, thnx

-----Original Message-----

From: [REDACTED]
Sent: Monday, December 13, 2010 9:14 AM
To: [REDACTED]
Cc: [REDACTED]; Richardson, Susan
Subject: RE: Solyndra Davis Bacon

It is a waiver of cp to funding that we are granting. The cp is that there are no defaults. We will send a letter stating that failure to comply with DB is a default but that we are forbearing from exercising our remedies for a 30 day period. Nothing in the letter would preclude us from exercising remedies for other defaults.

The substance of what was drafted last week has not changed. We need to wrap this up asap. What is the concurrence process other than sign off by you and [REDACTED]

[REDACTED]

[REDACTED]

Loan Guarantee Program
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Monday, December 13, 2010 9:11 AM
To: [REDACTED]
Subject: Re: Solyndra Davis Bacon

Thanks [REDACTED], I'm on way in. Other than dates does this change what we sent on friday? Two points off the bat. I don't want any phrase referring to waiver of compliance because it makes it sound like we are allowing a period where they don't have to comply when there is no authority for us to do that. Ill talk to [REDACTED] about the dates and I see that solyndra has reviewed already so I hope we still have a right to make additional changes since this hasn't gone through our concurrence process? Thanks, [REDACTED]

----- Original Message -----

From: [REDACTED]
To: [REDACTED]

Sent: Sun Dec 12 22:42:54 2010
Subject: Solyndra Davis Bacon

██████████ - Please see the attached for a refinement of the facts relating to Solyndra's DB compliance. I propose that Solyndra modify its waiver letter request to reflect its DB compliance. Notice of noncompliance and forbearance would be set forth in DOE correspondence to Solyndra in response to the waiver request. Please let me know re the date for compliance (see below). Thanks ██████████

----- Original Message -----

From: ██████████
To: ██████████
Cc: ██████████
Sent: Sun Dec 12 22:08:57 2010
Subject: RE:

██████████

Here you go. I've cc'ed ██████████ our DOE compliance manager who should be kept in the loop on the DBA issues since she is closer to the contractor and their subs. I've asked her to follow up on the exact relationship between R&S and the union trades, so we may have a further language modification there.

The difference between the \$260M number we were talking about and the \$316M that ██████████ inserted is that R&S was the contractor on both the Front-End facility as well as the Back-End tenant improvements, and the \$316 number includes the Back-End work as well.

I've moved the date back to January 13 for compliance (i.e. 30 days from tomorrow) and the certification by February 10, 2011, which would be the next Master Advance Date. I think I may have mentioned this already, but there are a million man-hours of labor in the facility, so even though they have been working on it for two weeks already, there is no way they are going to have it done by December 23, especially with the holidays coming up.

Ben

-----Original Message-----

From: ██████████
Sent: Sunday, December 12, 2010 1:25 PM
To: ██████████
Cc: ██████████
Subject:

██████████ Can you revise the following so that it is factually accurate. My current line of thinking is that you will supplement your waiver request with the following.

All construction on the Project for the first 12 months after Closing was conducted by a contractor with a contract (PLA? I don't think so but not sure) with a labor organization

affiliated with the Building Trades Department of the AFL-CIO. Substantially all of the \$260 million worth of DBA-covered construction performed to date as part of the Project has been performed by [REDACTED] and its subcontractors are using union labor covered by union collective bargaining agreements (PLA?? Don't think so but not sure) on this project. [REDACTED] has represented to Borrower that it possesses a high degree of confidence that DBA-compliant wages have been paid due to payment of the union-scale wage rates. For the last 3 months, however, Borrower has also directly contracted with approximately 14 contractors to perform DBA-covered construction. This work represents approximately \$10 million of the \$260 million of construction.

Borrower believes that [REDACTED] have flowed down provisions generally requiring its subcontractors to conduct all construction of the Project consistent with the requirements of the DBA. Until recently, however, Borrower did not include the specific DBA clauses required by the Common Agreement in Borrower's agreements with its direct contractors, including [REDACTED] and did not provide applicable wage determinations.

On or prior to November 23, 2010, in the course of its review of compliance with the DBA Requirements for the last 3 months, Borrower determined (c. November 23, 2010??) that some of its new direct contractors may not be in compliance with the certified payroll requirements of the DBA. (CBA/PLA?? Don't think so for those contractors) Borrower also believes that there may have been as much as \$200,000 in underpayments by some of those recent contractors. No employee or other complaints have been filed or lodged with Borrower, the Department of Labor or any other entity regarding the DBA. Borrower is in the process of engaging outside counsel for legal advice on DBA issues, as well as a DBA consultant to review the payrolls and to identify and help resolve any issues of non-compliance, including disbursement of any and all required underpayments. Borrower has informed all of the contractors, including [REDACTED] that they must immediately ensure that the required DBA clauses and wage determination schedule in Schedule 6.30 are incorporated in their contracts for construction, and that, no later than December 23, 2010 [i.e., 15 days from date of this letter] they must complete and submit to Borrower the certified payrolls for all construction performed thus far as part of the Project. These certified payrolls will reflect actual payment of any DBA required wages not previously paid. Borrower will also provide DOE, by December 23, 2010, certifications in writing by all site DBA-covered contractors and subcontractors that they have made all required underpayments to employees, and otherwise have complied with the requirements of Section 6.30 of the Common Agreement.

This e-mail and any accompanying attachments contain information that is confidential to Solyndra, Inc.
The information is intended solely for the use of the individual to whom it is addressed.
Any review, disclosure, copying, distribution, or use of this e-mail communication by others is strictly prohibited.
If you are not the intended recipient, please notify us immediately by returning this message to the sender and delete all copies.
Thank you for your cooperation.

Footnote 551



Department of Energy
Washington, DC 20585

December 13, 2010

Solyndra Fab 2 LLC
47488 Kato Road
Fremont, CA 94538

Solyndra, Inc.
47700 Kato Road
Fremont, CA 94538

Ladies and Gentlemen:

Reference is hereby made to (i) the Common Agreement (the "Common Agreement") dated as of September 2, 2009, by and among Solyndra Fab 2 LLC ("Borrower"), the U.S. Department of Energy (the "DOE") as guarantor of the DOE-Guaranteed Loan and as Loan Servicer, and U.S. Bank National Association (the "Collateral Agent"); and (ii) the Equity Funding Agreement dated as of September 2, 2009, by and among Borrower, DOE and Collateral Agent. Capitalized terms used and not defined herein shall have the respective meanings set forth in the Common Agreement.

You are hereby advised that as a consequence of the following (collectively, the "Identified Events of Default"): (a) the Sponsor's failure to deposit \$5,000,000 into the Equity Funding Account on December 1, 2010, an Event of Default has occurred pursuant to Section 8.1(g) of the Common Agreement and Section 2.2.2 of the Equity Funding Agreement, and (b) the Borrower's failure to comply with Section 6.30 of the Common Agreement (compliance with Davis Bacon Act regulatory requirements applicable to the Project) as more particularly described in the Borrower's letter to DOE dated November 23, 2010 as supplemented by that letter dated December 13, 2010.

While any discussions with us continue and until such Identified Events of Default are addressed, there are certain implications under the Common Agreement and the other Loan Documents resulting from such Identified Events of Default. These include, without limitation, the right of the DOE to exercise its rights and remedies under Section 8.2 of the Common Agreement and under the other Loan Documents. We advise you that any failure on the part of the DOE to exercise, or any delay in exercising, any of its rights under the Common Agreement and the other Loan Documents as a result of the Identified Events of Default described above or otherwise shall not be construed or operate as a waiver, estoppel, acceptance of course of conduct or forbearance by the DOE or preclude the exercise of any rights or remedies under the Common Agreement or the other Loan Documents, as the case may be. The DOE hereby expressly reserves all of its rights, remedies and claims as provided for in the Common Agreement, the Loan Documents



and/or by applicable law in connection with such Identified Events of Default and otherwise. The DOE may exercise any of its rights or remedies without further notice or demand except as may be required pursuant to applicable law and the Loan Documents. If any such actions are taken, the DOE will hold Borrower responsible for all additional costs and expenses, including attorney's fees and court costs, incurred in connection therewith.

Notwithstanding the foregoing, with respect to the Borrower's failure to comply with Section 6.30 of the Common Agreement, DOE hereby notifies the Borrower that it will forbear from exercising its remedies pursuant to the Common Agreement and the other Loan Documents until January 10, 2011, provided that during that time the Borrower is using its best efforts to obtain and deliver to DOE a written certification that (1) it has obtained a certification from each site contractor to the Project to the effect that, and has otherwise determined that, all Davis-Bacon Act ("DBA") covered contractors and subcontractors on the Project have complied with Section 6.30 of the Common Agreement, and (2) it is as of the date of such certification in full compliance with the requirements of Sections 5.39 and 6.30 of the Common Agreement, including the requirement of collection and review of all certified payrolls and the reimbursement to employees of any underpayments of wages, and it has independently reviewed and determined that all wages are DBA-compliant.

This letter shall not be construed to limit, modify, withdraw, amend or vary the terms of the Common Agreement or the other Loan Documents. Nothing herein or in any previous or subsequent discussions with the Borrower, shall prejudice or impair the right of the DOE to demand performance by the Borrower of its obligation under the Common Agreement or the other Loan Documents, as the case may be.

Very truly yours,

U.S. DEPARTMENT OF ENERGY

By: 

Name: Jonathan Silver

Title: Executive Director, Loan Programs
Office

Footnote 553, 555

[REDACTED]

From: Richardson, Susan
Sent: Monday, December 20, 2010 12:49 PM
To: Nwachuku, Frances
Subject: RE: Solyndra - Internal Process

I will circulate an e-mail shortly. But I don't think this is so much a legal issue. JS is going to have to get buy-in from CRB on process.

-----Original Message-----

From: Nwachuku, Frances
Sent: Monday, December 20, 2010 12:40 PM
To: Richardson, Susan
Subject: Solyndra - Internal Process

Hi Susan,

Do you have a view as to how we proceed? Ken and the rest of the legal team (Mofo and the Solyndra team are working diligently to effect a close by Jan. 7th). Meeting that date will be challenging if we don't know whether or not Jonathan can signoff or if we must run the package by the CRB. On the financial side, we are putting the finishing touches on a Credit Paper and presentation in the outside chance that a CRB stamp of approval is essential. I have also initiated discussions with OMB and Treasury so they are fully up to speed on the terms and we can commence working on any issues they may have.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[REDACTED]

Footnote 557

[REDACTED]

From: Richardson, Susan
Sent: Thursday, December 23, 2010 1:08 PM
To: Harris, Scott Blake
Subject: RE: Approval Process for Restructuring Agreements

Thank you Scott Owen and I have both spoken to [REDACTED] and believe we have a path forward.

Merry Merry and Happy Happy!

-----Original Message-----

From: Harris, Scott Blake
Sent: Thursday, December 23, 2010 1:02 PM
To: Richardson, Susan
Subject: RE: Approval Process for Restructuring Agreements

I've asked [REDACTED] to speak with you. We can bring this to a conclusion after the holidays.

Speaking of which, have a Merry Christmas and a Happy New Year.

Scott

Scott Blake Harris
General Counsel
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
[REDACTED]

-----Original Message-----

From: Richardson, Susan
Sent: Thursday, December 23, 2010 9:23 AM
To: Harris, Scott Blake
Cc: Nwachuku, Frances; Barwell, Owen; Silver, Jonathan; [REDACTED] Richardson, Susan
Subject: FW: Approval Process for Restructuring Agreements

Scott,

As discussed briefly, we need to confirm a process for authorizing the LPO to enter into the proposed restructuring agreements for Solyndra. (We are also working on a permanent process for approving significant amendments and restructurings; but that will not be done in time for the Solyndra closing.) The closing is scheduled for January 7th, and the timing is critical to permit continued funding and avoid more serious problems. My recommendation - which is consistent with existing authorities, and with practice both in other government agencies and in private sector financial institutions - is that the Director of Monitoring and the Executive Director, LPO seek approval from S-1, through an Action Memo that you approve, but that there be no formal credit committee or CRB process. JS will discuss this with Dan Poneman, and CRB will presumably get some form of notice.

The relevant authorities are summarized below:

1) Statute and Regs.: Neither Title XVII nor the Final Rule addresses the approval process. Title XVII sets forth a number of Secretarial determinations that must be made before the

Footnote 566

[Redacted]

From: [Redacted]
Sent: Monday, January 03, 2011 3:14 PM
To: [Redacted]
Subject: RE: Solyndra restructuring update

That's a good point. Also, if the borrower isn't able to repay under the terms of the restructuring, then a work-out should not be used. My understanding is that the branch thinks the borrower will default regardless. I don't think this is the point we want to make, but I can see the case for work-out based on Sarah's point.

(ab) *Work-outs* mean plans that offer options short of default or foreclosure for resolving troubled loans or loans in imminent default, such as deferring or forgiving principal or interest, reducing the borrower's interest rate, extending the loan maturity, or postponing collection action. Work-outs are expected to minimize the cost to the Government of resolving troubled loans or loans in imminent default. They should only be utilized if it is determined that the borrower will be unable to repay under the terms of the work-out and at the cost of the Government. For post-1991 direct loans and loan guarantees, the expected effects of work-outs on cash flow are included in the original estimate of the subsidy cost. Therefore, to the extent that the effects of work-outs on cash flow are the same as originally estimated, they do not alter the subsidy cost. If the effects on cash flow are more or less than the original estimate, the differences are included in reestimates of the subsidy and are not a modification.

Page 12 of Section 185 OMB Circular No. A-1 (REVISED - NOVEMBER 2010)

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Budget Review Division
Policy Analyst, Federal Credit Programs
Office of Management and Budget

[Redacted]

DO NOT COPY

From: [Redacted]
Sent: Monday, January 03, 2011 3:11 PM
To: [Redacted]
Subject: Re: Solyndra restructuring update

Mods vs. Restructuring can be a gray area.

If this restructuring were one that suggested a lower cost to Government, I would see a better case for a workout designation. However, when you look to the definition of a workout (I am paraphrasing), it is a restructuring intended to result in the lowest cost to government of default. (185.3ab). So, if it effectively costs more to restructure, I would not consider it a workout. Also, the action here-to ease loan terms, differs from actions assumed in the baseline. The two pieces combined makes it more a modification to me than a workout.

From: [Redacted]
To: [Redacted]
Sent: Mon Jan 03 15:01:57 2011
Subject: RE: Solyndra restructuring update

It seems like this could be viewed as a workout. No imminent default, but the definition of workout also covers "troubled loans." I would feel differently if DOE were providing additional capital beyond the existing \$535M obligation, but this is basically easing our loan terms so that Solyndra can attract new capital to increase the chances of the project succeeding.

Having said this, workouts should only proceed if the cost of the workout is less than the cost of default, and that does not seem to be the case given Kelly's analysis. I'm not sure we have any leverage against DOE if this is a workout and we disagree about the cost, other than we would need to approve the costs as included in the current, not-yet-approved reestimate.

I'm not the expert here, obviously, and I welcome your further thoughts.

From: [REDACTED]
Sent: Monday, January 03, 2011 2:55 PM
To: [REDACTED]
Subject: Re: Solyndra restructuring update

Thanks. For what it's worth, this looks like a modification to me. Kelly also forwarded an article that suggests DOE may have already modified the loan in June (by giving up IP rights), but did not update the cost.

If there is a policy call to view this differently, we will have a hard time walling this off on other Title 17 deals, but at a minimum should be able to use this as support for more realistic rates on new deals.

From: [REDACTED]
To: [REDACTED]
Sent: Mon Jan 03 14:30:29 2011
Subject: RE: Solyndra restructuring update

[REDACTED] and I are talking about this now—specifically whether it's a workout or a modification. I will go to the 3:45.

From: [REDACTED]
Sent: Monday, January 03, 2011 2:44 PM
To: [REDACTED]
Subject: Re: Solyndra restructuring update

I am headed to the optometrist—should hope to be out in time for the 3:45 chat.

From: [REDACTED]
To: [REDACTED]
Sent: Mon Jan 03 13:42:36 2011
Subject: Re: Solyndra restructuring update

Let me know if folks think it would be helpful and I can call in at 3:45, or follow up with any questions you have on my email from Thursday. I have some afternoon appts. But can work around them.

Kelly's analysis confirms our earlier concern that DOE's restructuring could effectively result in higher costs than liquidation at this point. While it doesn't change my preliminary view on this, note that this is Title 17's first award, and therefore DOE is likely to be very sensitive about optics if it should default.

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Sent: Mon Jan 03 13:15:01 2011
Subject: FW: Solyndra restructuring update

Per my last email.

Budget Review Division
Policy Analyst, Federal Credit Programs
Office of Management and Budget

From: Colyar, Kelly T.
Sent: Monday, January 03, 2011 12:40 PM
To: Saad, Fouad P.; Carroll, J. Kevin
Subject: RE: Solyndra restructuring update

I pulled together a quick spreadsheet to look at DOE's liquidation value analysis. Their numbers on the cost of the building seemed wildly off to me so I went back to check the original Independent Engineer's Report (February 2009) and the Fitch Report (August 2009).

This assumes total liquidation (i.e., scrapped and sold off in pieces), so the IP, intangibles, etc. are ascribed no value. I also do not know how much equity is in escrow at this point, but it would be first out (cushioning DOE's recovery). The bottom line is that DOE's analysis is NOT correct in that it does not assume the correct cost for the building. Adding this cost back in and using the liquidation percentages assumed at closing, gives a much different recovery estimate in this scenario than DOE assumes (6% vs. DOE's 18%-22%). More importantly, the recoveries in this analysis are significantly HIGHER than DOE's estimate of recoveries under their proposed restructuring (DOE assumes 23%-38%). In other words, the USG is better off liquidating the assets today than restructuring under DOE's proposal.

I can confirm this analysis with DOE, but the value of the land and building in my analysis are supported by the Independent Engineer and Rating Agency reports prior to closing.

J:\CREDIT\Energy\Title 17\Solyndra\October 2010\Solyndra Liquidation Comparison.xlsx

DO NOT COPY

From: Mertens, Richard A.
Sent: Monday, January 03, 2011 11:09 AM
To: Mas, Alex; Ericsson, Sally C.; Timberlake, Courtney B.; Aitken, Steven D.
Cc: Carroll, J. Kevin; Colyar, Kelly T.; Saad, Fouad P.
Subject: FW: Solyndra restructuring update

Attached and below are background for today's 3:45 pm meeting.

From: Saad, Fouad P.
Sent: Wednesday, December 22, 2010 6:01 PM
To: Colyar, Kelly T.
Cc: Carroll, J. Kevin
Subject: Solyndra restructuring update

We had a call with DOE yesterday (12/21) on the Solyndra restructuring, that was informed by the attachments to this email that Frances sent prior to the call. Below are some of the key take-aways from my notes:

- See the PPT presentation attached for an update on the company's status, DOE loan amounts disbursed (\$460 out of \$535 as of Dec.), background on the consolidation plan, etc.

- DOE asserts that this restructuring is a work-out, as Solyndra (the parent) will run out of cash as of January, 2011, and while the project's finances would at first glance be fine, it would be greatly impacted by a Solyndra bankruptcy given how Integral the parent is to the project.
- DOE and its contractors has reviewed Solyndra's consolidation plan, which calls for \$150 million in additional capital to achieve construction completion in Q2 of calendar year 2011 and turn cash flow positive in Q1 2012. DOE has not, however, sought any independent third party validation of the plan and estimates; they have sought to assess its reasonableness internally. They have also not sought any external support from restructuring specialists over the past few months
- As we learned from DOE last week, Solyndra's investors will be contributing \$75 million over the next 2 quarters, during the same time period during which DOE's remaining \$75 million loan disbursements occur. This equity contribution would be ranked pari passu with DOE's remaining senior debt (\$150 million). The balance of DOE's debt \$385 would be become "senior second position," along with the equity investors' most recent capital contribution of \$175 million, which they put in as convertible debt (and for which they gained rights to Solyndra's IP, apparently). Using Original Issue Discount (OID) notes in implementing this re-structuring DOE's debt (\$385m) would be discounted by 30%, the investors' convertible notes (\$175m) are to be discounted by 55%.
- However, the investors' new \$75 million infusion would be allowed to receive first payment preference in a liquidation prior to March 2013. We asked whether this might effectively subordinate even DOE's remaining senior secured loan. DOE stated that they did not believe it does, and that their counsel (LGP and DOE) had been involved (Cesar, Richardson and Harris). I have requested DOE's legal position on this.
- DOE explains that it had "access" to Solyndra's IP in the original loan documentation, with a capacity limit of 300MW anticipated for Feb 2. DOE did not have unlimited claims to the IP itself, and indeed the IP was later pledged to the investors who provided the most recent \$75 million in capital. DOE's contemplated restructuring would pledge this IP fully to DOE. It would also give DOE recourse to all the assets of Solyndra, the parent (asses, contracts, IP, etc.).
- DOE believes recoveries that would result from this restructuring would exceed recoveries if the project were to default today. They have provided their analysis. Their approach seems reasonable to me, although it depends on the feasibility of the consolidation plan, and various assumptions around the value of Solyndra as a going concern if it gets the capital it needs and makes it to EoL. DOE used two different comparable valuation approaches that led to similar results (\$200 to \$300 million valuation in 2012), and conclude the government is better off restructuring now than letting it default.
- While this may be true, the terms of the deal may not be as good as they could have been for the government.

Next steps:

- Review DOE's legal position re: effective subordination
- Determine whether we concur this is a work-out vs. modification
- Tee up any policy considerations, prior to DOE's proposed closing date for this restructuring, January 10.

Nora, if you had other notes / take-aways, please feel free to chime in.

From: Nwachuku, Frances [redacted]
 Sent: Tuesday, December 21, 2010 1:05 PM
 To: Saad, Fouad P.
 Cc: Colyar, Kelly T.
 Subject: RE: follow up

Find attached the recovery analysis as promised.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585



From: Saad, Fouad P. [Redacted]
Sent: Monday, December 20, 2010 7:05 PM
To: Nwachuku, Frances
Cc: Colyar, Kelly T.
Subject: RE: follow up

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Thank you, Frances. I'll arrange a call in number tomorrow and circulate.

Having a preview of the recovery analysis would be very helpful, if that's ready before the full Credit Paper.
Thanks for offering to send that.

Fouad

From: Nwachuku, Frances [Redacted]
Sent: Monday, December 20, 2010 5:59 PM
To: Saad, Fouad P.
Cc: Colyar, Kelly T.
Subject: RE: follow up

DO NOT COPY

Yes, it does. Please find attached the presentation and the financial model. The recovery analysis is contained in the Credit Paper which I am still reviewing and will send through as soon as I am done editing it. Happy to send you the portion that contains that information, if you desire.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585



From: Saad, Fouad P. [REDACTED]
Sent: Monday, December 20, 2010 5:28 PM
To: Nwachuku, Frances
Cc: Colyar, Kelly T.
Subject: RE: follow up

Hello Frances,

Does tomorrow at 2:30 still work for DOE?

Fouad

From: Colyar, Kelly T.
Sent: Friday, December 17, 2010 5:33 PM
To: Nwachuku, Frances
Cc: Saad, Fouad P.
Subject: RE: follow up

Sorry—meant to cc Fouad here.

From: Colyar, Kelly T.
Sent: Friday, December 17, 2010 5:13 PM
To: 'Nwachuku, Frances'
Subject: RE: follow up

Frances,

That sounds great. I am hoping to be out part of next week, but Fouad is available if I can't join the call. Should we plan to discuss Tuesday after we have a chance to look at the materials Monday evening? Does 2:30 Tuesday work for a call?

From: Nwachuku, Frances [REDACTED]
Sent: Friday, December 17, 2010 5:20 PM
To: Colyar, Kelly T.
Subject: RE: follow up

Kelly,

Please let me know when you are available to discuss the parameters of the revised cost estimate.

By COB Monday, we will send over the requested information. In addition to the proposed deal structure and model, it will contain our assessment of recoveries under two bankruptcy scenarios - pre-project completion and post project completion/restructuring. Existing technical defaults were waived prior to funding (I believe that it was just the one default).

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW

Washington, DC 20585



From: Colyar, Kelly T. [Redacted]
Sent: Thursday, December 16, 2010 6:57 PM
To: Nwachuku, Frances
Subject: follow up

Frances,

Thanks again for the call earlier this week. I wanted to follow up on a few items. Specifically, do you have the summary of the proposed revised terms and financial model we discussed?

As I mentioned, we should also discuss the parameters for the revised cost estimate. We will need to wrap this up before DOE signs the amended loan agreements. We'll need to dig in a little deeper later on the specific cashflows, but below are the first order questions we'll need to think through in developing the cost estimate. Specifically, we need the analysis supporting the determination that the proposed restructuring would constitute a workout captured in the re-estimate, vs. a modification. Typically, two of the major considerations in this determination are whether the restructuring is done as a result of a default or imminent default (where the borrower is not expected to be able to repay the current debt); and whether the cost of the restructuring is less than that of default or foreclosure, and optimizes recoveries for the U.S. government.

1. Do you have an analysis of potential losses and recoveries under the proposed and various alternative scenarios (e.g., calling default today or other alternatives)?
2. We understand DOE waived the requirement for the first equity payment to fund the cost overrun facility. Are there other covenants/requirements for which Solyndra is not in compliance or which DOE anticipates the borrower may not be in compliance? This would help in thinking through the particular scenario to model in this case.

Finally, should we schedule the discussion on [Redacted] for Monday? Do you have any materials you could circulate for that discussion? I found the Solyndra presentation in October very helpful. It might be helpful to have some background on that to help guide the discussion as well.

Let me know if you have any questions or would like to discuss.

Thanks.

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Footnote 568

[Redacted]

From: [Redacted]
Sent: Monday, January 03, 2011 6:27 PM
To: [Redacted]
Cc: [Redacted]
Subject: RE: Solyndra mtg readout

One addition to my notes below. Alex asked where Treasury was on the issue and Kelly responded that Treasury doesn't have a statutory responsibility here so is not likely to opine officially. Alex asked Energy branch to reach out to Treasury to see if they would agree, at least analytically, that the restructuring is not in the USG's best interest.

[Redacted]

Budget Review Division
Policy Analyst, Federal Credit Programs
Office of Management and Budget

[Redacted] **CONFIDENTIAL**
[Redacted]

From: [Redacted]
Sent: Monday, January 03, 2011 6:28 PM
To: [Redacted]
Cc: [Redacted]
Subject: Solyndra mtg readout

[Redacted] and I attended the meeting with Alex, Sally, Steve Aitken, Bill Richardson, Rick Mertens and the Energy branch. Below is a readout as well as details on follow up deliverables.



Kelly and Fouad explained the issues with DOE's restructuring proposal. Alex seemed to think that liquidating the project now was the best option in terms of the Government's interest, but wanted to tee it up for Jeff Zients and eventually Jack. The question for Jack would be less on the terms of the restructuring and more on whether OMB should play an active role in these types of decisions. Steve and Bill asked Kelly to forward the subordination question to Susan Richardson at DOE and cc them both. We also discussed the difference between a work-out and a modification and explained the issue with the lack of ARFA funding for modifications.

To tee up the proposal for Jeff, Alex asked the branch to put together a 2 page memo by COB tomorrow focusing on the following.

1. DOE vs OMB liquidation analysis
2. Broader economic analysis (expected value future action, i.e., restructuring or not funding the rest of the original obligation)
3. Market analysis (will the project be viable upon completion)
4. Subordination issues (placeholder for legal)
5. Likely timing of default if restructured/not restructured.

ACTION ITEM for CREDIT CREW: Bill Richardson asked if there was precedent for this level of intervention in other credit programs to inform the decision as to the appropriate level of OMB involvement. I said that we'd research some examples, but I wasn't aware of any off the top of my head. I'm sure there are examples in MARAD, RRIF or TIFA where we've done work-outs which were in the USG's best interest, but are there examples where we've done a modification because the restructuring was not in the best interest of the Government? I know USDA does routine administrative work-outs in which OMB is not involved but the agency assumes some level of work-outs in the original subsidy rate.

Patrick, please let me know if I misstated anything. Thanks!


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Office of Management and Budget


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Footnote 570

[REDACTED]

From: Ericsson, Sally C.
Sent: Wednesday, December 08, 2010 7:18 PM
To: Browner, Carol M.; Aldy, Joseph E.; Zichal, Heather R.
Cc: Mas, Alex
Subject: Solyndra liquidity crisis

Heads up -- I'm sure you already know this. Negotiations are still fluid.

DOE has shared with us (and Treasury) that Solyndra is in the midst of a severe liquidity crisis. In its negotiations with Solyndra investors regarding potential restructuring options, DOE has created a deadline THIS FRIDAY that may precipitate a meltdown that would likely be very embarrassing for DOE and the Administration. We should know by COB tomorrow if Solyndra will meet this deadline.

DOE has indicated to Solyndra that they will not disburse the next scheduled loan disbursement (expected this Friday) unless two of Solyndra's major current investors commit to making an additional \$75 million equity investment before then. This investment is only half of the amount called for by Solyndra's consolidation plan, but efforts thus far to raise equity from strategic and financial investors have not been successful.

If investors do not commit these funds, and DOE does not disburse on the loan, Solyndra may default on obligations to various suppliers soon thereafter. This would likely become public quickly, and could force the company into bankruptcy. If investors commit the funds, restructuring discussion will continue, and may involve significant changes including extending the current loan tenor and repayment grace periods, and even potentially discounting the value of DOE's debt and/or subordinating parts of it to attract further equity capital.

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Footnote 573

From: Colyar, Kelly T.
Sent: Tuesday, December 14, 2010 7:27 PM
To: Carroll, J. Kevin; Mertens, Richard A.; Saad, Fouad P.; [REDACTED]
Subject: RE: Solyndra

We didn't, but I think we should consider taking this into account when we score future deals.

From: Carroll, J. Kevin
Sent: Tuesday, December 14, 2010 7:25 PM
To: Colyar, Kelly T.; Mertens, Richard A.; Saad, Fouad P.; [REDACTED]
Subject: RE: Solyndra

Did anyone raise the issue of how cost overrun facilities might be scored (or not) in future deals as a result of DOE's willingness to waive them?

From: Colyar, Kelly T.
Sent: Tuesday, December 14, 2010 7:22 PM
To: Mertens, Richard A.; Carroll, J. Kevin; Saad, Fouad P.; [REDACTED]
Subject: RE: Solyndra

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DOE provided an update on Solyndra today. The call was somewhat difficult to follow. However, below are the key terms we understood from today's discussion. DOE indicated they would send us a brief summary to clarify the proposed changes.

DOE indicated that Solyndra was unable to attract new investors for their additional equity requirements. DOE also recently waived a requirement (i.e., avoided a technical default) under the loan agreement that required Solyndra to fund a cost overrun facility. DOE has agreed in principle to restructure the DOE loan guarantee based on a commitment from existing investors to provide additional capital. Under the new terms, existing investors will provide an additional \$150 million in senior debt that will be on the same terms as part of DOE's debt. DOE's debt will be split into two tranches; \$150 million which will be in the same position as the new senior debt from investors and the remaining \$385 million which will become junior. The \$385 million in junior debt will also be discounted significantly and the loan will also be extended from 7 to 12 years. DOE anticipates executing the changes to the loan agreements on or around January 10.

We have requested some additional information from DOE regarding their analysis as to how the proposed changes maximize the potential recoveries for the U.S. government since this was not immediately clear. We will also follow up regarding the proposed structure's compliance with the statutory requirement that the DOE guaranteed debt not be subordinate to other financing and the implications for the credit subsidy cost estimate under the proposed terms.

From: Colyar, Kelly T.
Sent: Monday, December 13, 2010 4:43 PM
To: Mertens, Richard A.; Carroll, J. Kevin; Saad, Fouad P.; [REDACTED]
Subject: RE: Solyndra

We were unable to have the call with DOE today to get an update on Solyndra. We have rescheduled for 3:30 tomorrow.

However, I understand from FFB that DOE is trying to arrange a small disbursement today (well after normal hours for these activities) while they continue additional negotiations with Solyndra. This potential disbursement will not include the next progress payment to the General Contractor. That disbursement is still contingent upon ongoing negotiations between DOE and Solyndra/Investors.

From: Colyar, Kelly T.
Sent: Friday, December 10, 2010 7:32 PM
To: Mertens, Richard A.; Carroll, J. Kevin; Saad, Fouad P.; [REDACTED]
Subject: Solyndra

DOE is still working through discussions with Solyndra and their investors. They have extended the deadline for the immediate funding on the existing loan from today to next week.

From: Nwachuku, Frances [REDACTED]
Sent: Friday, December 10, 2010 6:42 PM
To: Colyar, Kelly T.
Subject: RE: follow up

Hi Kelly,

We are about ready to conclude the negotiations. We have one thorny issue yet to be resolved and are still trying to be optimistic that we can fund next week. I will let Petri know (even though this is way past the end of the business day).

Let's plan to catch up on Monday. Have a restful weekend.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

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[REDACTED]

From: Colyar, Kelly T. [REDACTED]
Sent: Friday, December 10, 2010 3:22 PM
To: Nwachuku, Frances
Subject: RE: follow up

Hi Frances,

Just wanted to follow up to make sure all went ok today. Was there a disbursement to Solyndra?

From: Nwachuku, Frances [REDACTED]
Sent: Thursday, December 09, 2010 4:48 PM
To: Colyar, Kelly T.
Subject: Re: follow up

Thanks, Kelly. Have a great weekend and talk to you soon. Feel better.

Frances

From: Colyar, Kelly T. [REDACTED]
To: Nwachuku, Frances
Sent: Thu Dec 09 16:44:00 2010
Subject: RE: follow up

Frances,

Thanks for the update and good luck with negotiations. That sounds like a good plan. I'll get a line for Monday and find some times later in the week for a discussion on [REDACTED]. Let me know if you need anything in the interim.

Kelly

From: Nwachuku, Frances [REDACTED]
Sent: Thursday, December 09, 2010 4:16 PM
To: Colyar, Kelly T.
Subject: Re: follow up

Hi Kelly,

Hope you are feeling better?

We have been in discussions with the company and major investors all of today (still negotiating as I type). It appears we may be close to a deal in line with what we believe to be acceptable. Funding tomorrow may therefore be a possibility.

Let's plan to talk next week. Given that we have been fully engaged in this process all week, I would suggest that we move the Monday discussion on [REDACTED] to Wednesday or Thursday. We can still provide feedback on Solyndra on Monday, should we fund tomorrow.

Rest up.

Frances

From: Colyar, Kelly T. [REDACTED]
To: Nwachuku, Frances
Sent: Thu Dec 09 12:50:03 2010
Subject: follow up

Hi Frances,

Thanks again for the call yesterday. I wanted to follow up on a couple of items. Do you have a sense of where tomorrow's disbursement stands? Do you have know approximately how much that disbursement might be?

Also, you mentioned a potential call Monday. Does 2:30 work for you?

Unfortunately, I am at home sick today. However, I'm checking email or feel free to give me a call here if you prefer to discuss via phone. My number is [REDACTED].

Regards,
Kelly

Footnote 578, 579

From: Carroll, J. Kevin
 Sent: Wednesday, December 15, 2010 9:57 AM
 To: Mertens, Richard A.
 Cc: Aitken, Steven D. [REDACTED]
 Subject: FW: Solyndra

There are some questions at the staff level about how DOE is going about the restructuring for Solyndra. At least one involves the legal question of what 1703(d) (3) means for their plan to make some of the debt "junior" to the new debt. (see below) I think they have stretched this definition beyond its limits.

(3) SUBORDINATION.--The obligation shall be subject to the condition that the obligation is not subordinate to other financing.

-----Original Message-----

From: Colyar, Kelly
 Sent: Wednesday, December 15, 2010 8:10 AM
 To: Carroll, J. Kevin; Saad, Fouad D. [REDACTED]
 Subject: Fw: Solyndra

I agree with [REDACTED] thoughts here. Note she had the same question on pricing future deals as we discussed yesterday.

----- Original Message -----

From: [REDACTED]
 To: Colyar, Kelly T.
 Sent: Wed Dec 15 07:39:10 2010
 Subject: Re: Solyndra

I agree with your questions, and wonder whether this workout is really giving more to the parent than recovering for doe. I think we need to see DOE's write up of the terms and analysis of what happens absent the change. I had a very hard time following the details over the phone.

For a workout, we need to determine do we agree that 1) the project truly is in imminent default (sounds close here); and 2) the changes lead to the optimal recoveries from the Govt.

A workout sometimes will have different terms than the statute holds for the original loan but I think your questions would add color to #2 above. Is it really a better deal than nothing? If the answer is still yes, then we would need to price into future deals recovery rate that DOE will accept lower than optimal recoveries.

----- Original Message -----

From: Colyar, Kelly T.
 To: [REDACTED]
 Sent: Wed Dec 15 07:22:54 2010
 Subject: Solyndra

On Solyndra, do you have thoughts on whether the proposed changes constitute a re-estimate vs a modification? Also, I am looking at whether the junior debt is consistent with the statute. More broadly, if the debt is discounted, I'm curious if that is consistent with a reasonable

prospect of repayment. If a modification (vs workout), this seems problematic to me. Do you have thoughts?

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Footnote 580

From:
Sent:
To:
Subject:

Colyar, Kelly T.
Wednesday, December 15, 2010 11:49 AM
Saad, Fouad P.; Carroll, J. Kevin;
RE: Solyndra

Yes, your examples are modifications--there is no imminent default. If default were imminent, that is typically a workout (i.e., re-estimate).

I'm going back through the Solyndra Term Sheet to refresh myself on a few points. One item we should ask DOE to provide is a compliance checklist. After the reminder on the issue of the funding for the cost overrun facility, I checked the covenants and events of default to see if there were other obvious questions. It seems there are:

1. Reps and Warranties: the Borrower and Sponsor are in 'good standing'. Clearly they are not, but I doubt DOE has the wherewithal to enforce this in and of itself.
2. Reps and Warranties: the Borrower and Sponsor's 'Solvency'. Again, questionable, but they are not technically insolvent yet.
3. Events of Default: a default that if any event shall have occurred or can be reasonably expected to occur with respect to the Sponsor that could reasonably be expected to have a material adverse effect on the ability of the Sponsor to perform its obligations under any Transaction Document to which it is party, subject to appropriate cure periods.' Clearly, Solyndra Inc. is having difficulty meeting this obligation, but the wording is fuzzy enough that I assume DOE would have difficulty enforcing without a specific breach of contract on the part of Solyndra Inc. which brings me to the next point,
4. Events of Default: 'failure to fund when required or other default with respect to the Base Equity Commitment or the Overrun Equity Commitment'. The sponsor is required to fund \$5 million into the cost overrun facility each month for 6 months until the facility has \$30 million starting 15 months after financial closing. The first payment was due this month--which DOE waived. They owe \$5 million each month for the next 5 months. Since they have no capital to fund this amount, DOE will either need to waive each of these payments or they can call a default. Since DOE has the upper hand (they can now call a default at any point), I am vastly confused by DOE's decision to negotiate away their senior position in this transaction. Investors are not putting in more equity because you can imagine they do not believe they will get any 'recoveries' (forget about returns). In addition, they are not putting in subordinated debt, but SENIOR debt that is replacing DOE--they are displacing DOE's potential for recoveries in a default. We will also want to look at the inter-creditor agreements. As a senior lender, the Investors may have more ability to control a default situation and/or have other rights that affect DOE.

Also, I have always been confused by DOE's claims that their negotiated deal will improve DOE's position because DOE would get the IP in the collateral package. My memory was that DOE got the IP. This was correct since the Term Sheet includes 'all intellectual property, licenses, general intangibles and goodwill'. In the *operating* of the company, the project company had a license for the IP. However, DOE's collateral package included the IP (meaning DOE got it outright in a default). We had significant discussions on this prior to conditional commitment at DOE since the reality is that if the company went bankrupt and DOE wanted to continue operating it, they would have the IP, but likely have to rehire Solyndra personnel to run it due to the proprietary nature (which limits its value). Nevertheless, the point is DOE had the IP. I'm not sure what DOE was negotiating for unless the definitive loan documents at closing differed from the Term Sheet or was somehow not perfected. This would be troubling since the cost estimate assumed DOE had the IP in the collateral package.

-----Original Message-----

From: Saad, Fouad P.
Sent: Wednesday, December 15, 2010 10:09 AM
To: Colyar, Kelly T.; Carroll, J. Kevin; [REDACTED]
Subject: RE: Solyndra

I am clear on how the two are paid for, and if there is discretion in this decision, I would lean towards DOE having to pay for Solyndra's proposed changes through BA. I am raising the question of what distinguishes between a modification and re-estimate, a questions we've raised with credit crew in the past.

If a workout requires DOE to take action, doesn't it still constitute a modification? So even if a default were not imminent, but DOE approved a material change to a loan (say, extending the tenor to reduce debt service to avoid non-imminent default down the road), this would constitute a govt. action and modification.

Another example: if a part of a workout where default is not imminent, DOE approves the sale of a project that was not expected at closing to a new owner who could back-stop debt payments, but the loan remains on the books of the borrowing entity throughout the sale, this would seem to also constitute a govt. approved action that would be at least a modification, if not a new obligation.

In short, I thought the criterion for a modification was government action, not default imminence.

-----Original Message-----

From: Colyar, Kelly T.
Sent: Wednesday, December 15, 2010 9:57 AM
To: Saad, Fouad P.; Carroll, J. Kevin; [REDACTED]
Subject: RE: Solyndra

The difference is a modification must be paid through the program's BA. Workouts are paid through permanent indefinite authority via a re-estimate. Typically, the difference is whether there is an imminent default. If no, then modification. If yes, then workout.

-----Original Message-----

From: Saad, Fouad P.
Sent: Wednesday, December 15, 2010 9:54 AM
To: Colyar, Kelly T.; Carroll, J. Kevin; [REDACTED]
Subject: RE: Solyndra

I'm not sure I understand how this could possibly NOT be a modification. DOE clearly has to take action no matter what the restructuring looks like, right?

Also as a modification, DOE would have to fund increases to the credit subsidy, which seems appropriate here. Frances argued that since they downgraded Solyndra to a CCC in the reestimate, any increases in cost may have already been captured. But 1) we haven't approved the reestimate, and 2) this isn't just about credit quality deteriorating (an external factor); they are actively seeking loan changes from DOE, and haircuts / subordination of the USG's debt. I can't see how DOE could accept such changes and not call it a modification (and therefore pay for it from their 1705 subsidy).

Finally, working through this as a modification would seem to give us a bigger hook, if we think we should exercise it.

-----Original Message-----

From: Colyar, Kelly T.
Sent: Wednesday, December 15, 2010 8:15 AM
To: Carroll, J. Kevin; Saad, Fouad P.; [REDACTED]
Subject: Fw: Solyndra

I agree with [REDACTED] thoughts here. Note she had the same question on pricing future deals as we discussed yesterday.

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From: [REDACTED]
To: Colyar, Kelly T.
Sent: Wed Dec 15 07:39:10 2010
Subject: Re: Solyndra

I agree with your questions, and wonder whether this workout is really giving more to the parent than recovering for DOE. I think we need to see DOE's write up of the terms and analysis of what happens absent the change. I had a very hard time following the details over the phone.

For a workout, we need to determine - do we agree that 1) the project truly is in imminent default (sounds close here); and 2) the changes lead to the optimal recoveries from the Govt.

A workout sometimes will have different terms than the statute holds for the original loan but I think your questions would add color to #2 above. Is it really a better deal than nothing? If the answer is still yes, then we would need to price into future deals recovery rate that DOE will accept lower than optimal recoveries.

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To: [REDACTED]
Sent: Wed Dec 15 07:22:54 2010
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Footnote 582

From: Cotyar, Kelly T.
Sent: Thursday, December 16, 2010 6:57 PM
To: Nwachuku, Frances
Subject: follow up

Frances,

Thanks again for the call earlier this week. I wanted to follow up on a few items. Specifically, do you have the summary of the proposed revised terms and financial model we discussed?

As I mentioned, we should also discuss the parameters for the revised cost estimate. We will need to wrap this up before DOE signs the amended loan agreements. We'll need to dig in a little deeper later on the specific cashflows, but below are the first order questions we'll need to think through in developing the cost estimate. Specifically, we need the analysis supporting the determination that the proposed restructuring would constitute a workout captured in the re-estimate, vs. a modification. Typically, two of the major considerations in this determination are whether the restructuring is done as a result of a default or imminent default (where the borrower is not expected to be able to repay the current debt); and whether the cost of the restructuring is less than that of default or foreclosure, and optimizes recoveries for the U.S. government.

1. Do you have an analysis of potential losses and recoveries under the proposed and various alternative scenarios (e.g., calling default today or other alternatives)?
2. We understand DOE waived the requirements for the first equity payment to fund the cost overrun facility. Are there other covenants/requirements for which Solyndra is not in compliance or which DOE anticipates the borrower may not be in compliance? This would help in thinking through the particular scenario to model in this case.

Finally, should we schedule the discussion on [REDACTED] for Monday? Do you have any materials you could circulate for that discussion? I found the Solyndra presentation in October very helpful. It might be helpful to have some background on that to help guide the discussion as well.

Let me know if you have any questions or would like to discuss.

Thanks.

Footnote 585-590, 592

From: [REDACTED]
Sent: Wednesday, December 22, 2010 6:09 PM
To: Saad, Fouad P.; Colyar, Kelly T.; [REDACTED]
Cc: Carroll, J. Kevin; [REDACTED]
Subject: RE: Solyndra restructuring update

I obviously need to run through the materials (thanks for sharing), but one question—how is this a workout (actions taken to maximize recovery given imminent default) if the project is “at first glance be fine”?

If this does proceed as a workout, I think we’ll need to carefully consider what this would mean for future loan guarantees and scoring.

- DOE has historically argued that even with innovative technologies and some of the more creative structures under Title XVII that a key benefit of project finance—the insulation of the project from the riskiness of the parent—is maintained. In this case, the trouble of the parent is straining the project.
- In terms of recovery, DOE has also argued that DOE would always take every step necessary to maximize return to DOE. ASFO had notes below, it seems that DOE is allowing terms that are more favorable to equity holders and other parties to help facilitate this restructuring. Even if it is a higher recovery than doing nothing, it’s not clear that this structure truly maximizes return to the government on a project in imminent default.

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From: Saad, Fouad P.
Sent: Wednesday, December 22, 2010 6:01 PM
To: Colyar, Kelly T.; [REDACTED]
Cc: Carroll, J. Kevin
Subject: Solyndra restructuring update

We had a call with DOE yesterday (12/21) on the Solyndra restructuring that was informed by the attachments to this email that Frances sent prior to the call. Below are some of the key take-aways from my notes:

- See the PPT presentation attached for an update on the company’s status, DOE loan amounts disbursed (\$460 out of \$535 as of Dec.), background on the consolidation plan, etc.
- DOE asserts that this restructuring is a workout as Solyndra (the parent) will run out of cash as of January, 2011, and while the project’s prospects would at first glance be fine, it would be greatly impacted by a Solyndra bankruptcy given how integral the parent is to the project.
- DOE and its contractors has reviewed Solyndra’s consolidation plan, which calls for \$150 million in additional capital to achieve construction completion in Q2 of calendar year 2011 and turn cash flow positive in Q1 2012. DOE has not, however, sought any independent third party validation of the plan and estimates; they have sought to assess its reasonableness internally. They have also not sought any external support from restructuring specialists over the past few months
- As we learned from DOE last week, Solyndra’s Investors will be contributing \$75 million over the next 2 quarters, during the same time period during which DOE’s remaining \$75 million loan disbursements occur. This equity contribution would be ranked pari passu with DOE’s remaining senior debt (\$150 million). The balance of DOE’s debt \$385 would be become “senior second position,” along with the equity investors’ most recent capital contribution of \$175 million, which they put in as convertible debt (and for which they gained rights to Solyndra’s IP, apparently). Using Original Issue Discount (OID) notes in implementing this re-structuring DOE’s debt (\$385m) would be discounted by 30%, the investors’ convertible notes (\$175m) are to be discounted by 55%.

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- However, the investors' new \$75 million infusion would be allowed to receive first payment preference in a liquidation prior to March 2013. We asked whether this might effectively subordinate even DOE's remaining senior secured loan. DOE stated that they did not believe it does, and that their counsel (LGP and DOE) had been involved [redacted] Richardson, and Harris). I have requested DOE's legal position on this.
- DOE explains that it had "access" to Solyndra's IP in the original loan documentation, with a capacity limit of 300MW anticipated for Fab 2; DOE did not have unlimited claims to the IP itself, and indeed the IP was later pledged to the Investors who provided the most recent \$175 million in capital. DOE's contemplated restructuring would pledge this IP fully to DOE. It would also give DOE recourse to all the assets of Solyndra, the parent (asses, contracts, IP, etc.).
- DOE believes recoveries that would result from this restructuring would exceed recoveries if the project were to default today. They have provided their analysis. Their approach seems reasonable to me, although it depends on the feasibility of the consolidation plan, and various assumptions around the value of Solyndra as a going concern if it gets the capital it needs and makes it to 2012. DOE used two different comparable valuation approaches that led to similar results (\$200 to \$300 million valuation in 2012), and conclude the government is better off restructuring now than letting it default.
- While this may be the best outcome of the deal, it may not be as good as they could have been for the government.

Next steps:

- Review DOE's legal position re: effective subordination
- Determine whether we concur this is a walk-out vs. modification
- Tee up any policy considerations, prior to DOE's proposed closing date for this restructuring, January 10.

[redacted] If you had other notes/ take-aways, please feel free to chime in.

From: Nwachuku, Frances [redacted]
 Sent: Tuesday, December 21, 2010 1:05 PM
 To: Saad, Fouad P.
 Cc: Colyar, Kelly T.
 Subject: RE: follow up

Find attached the recovery analysis as promised.

Frances

DO NOT COPY

Frances I. Nwachuku
 Director
 Portfolio Management
 Loan Guarantee Program Office
 US Department of Energy
 1000 Independence Avenue SW
 Washington, DC 20585

[redacted]
 From: Saad, Fouad P. [redacted]
 Sent: Monday, December 20, 2010 7:07 PM

To: Nwachuku, Frances
Cc: Colyar, Kelly T.
Subject: RE: follow up

Thank you, Frances. I'll arrange a call-in number tomorrow and circulate.

Having a preview of the recovery analysis would be very helpful, if that's ready before the full Credit Paper. Thanks for offering to send that.

Fouad

From: Nwachuku, Frances [REDACTED]
Sent: Monday, December 20, 2010 5:59 PM
To: Saad, Fouad P.
Cc: Colyar, Kelly T.
Subject: RE: follow up

Yes, it does. Please find attached the presentation with the financial model. The recovery analysis is contained in the Credit Paper which I am still reviewing and will send through as soon as I am done editing it. Happy to send you the portion that contains that information, if you desire.

Frances

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Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

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[REDACTED]

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From: Saad, Fouad P. [REDACTED]
Sent: Monday, December 20, 2010 5:28 PM
To: Nwachuku, Frances
Cc: Colyar, Kelly T.
Subject: RE: follow up.

Hello Frances,

Does tomorrow at 2:30 still work for DOE?

Fouad

From: Colyar, Kelly T.
Sent: Friday, December 17, 2010 5:33 PM
To: Nwachuku, Frances
Cc: Saad, Fouad P.
Subject: RE: follow up

Sorry—meant to cc Fouad here.

From: Colyar, Kelly T.
Sent: Friday, December 17, 2010 5:33 PM
To: 'Nwachuku, Frances'
Subject: RE: follow up

Frances,

That sounds great. I am hoping to be out part of next week, but Fouad is available if I can't join the call. Should we plan to discuss Tuesday after we have a chance to look at the materials Monday evening? Does 2:30 Tuesday work for a call?

From: Nwachuku, Frances
Sent: Friday, December 17, 2010 5:20 PM
To: Colyar, Kelly T.
Subject: RE: follow up

Kelly,

Please let me know when you are available to discuss the parameters of the revised cost estimate.

By COB Monday, we will send over the requested information. In addition to the proposed deal structure and model, it will contain our assessment of recoveries under two bankruptcy scenarios - pre-project completion and post project completion/restructuring. Existing technical defaults were waived prior to funding (I believe that it was just the one default).

Frances

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Sent: Thursday, December 16, 2010 6:57 PM
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Finally, should we schedule the discussion on [redacted] for Monday? Do you have any materials you could circulate for that discussion? I found the Solyndra presentation in October very helpful. It might be helpful to have some background on that to help guide the discussion as well.

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Thanks.

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Footnote 591

[REDACTED]

From: Saad, Fouad P.
Sent: Wednesday, December 22, 2010 6:05 PM
To: Nwachuku, Frances
Cc: Colyar, Kelly T.
Subject: RE: follow up

Frances,

Thank you very much for taking the time to walk us through the details of the proposed restructuring on the call yesterday. Could you please provide us with DOE's legal position regarding Tranche A, and the view you explained yesterday that the first payment preference for the investors' equity contribution does not constitute effective subordination of the DOE loan?

Thank you.
Fouad

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[REDACTED]

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To: Nwachuku, Frances
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Thanks.

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Footnote 594

From: Colyar, Kelly T.
Sent: Monday, January 03, 2011 12:40 PM
To: Saad, Fouad P.; Carroll, J. Kevin
Subject: RE: Solyndra restructuring update
Attachments: Solyndra - Liquidation.docx; Solyndra Liquidation Comparison.xlsx

I pulled together a quick spreadsheet to look at DOE's liquidation value analysis. Their numbers on the cost of the building seemed wildly off to me so I went back to check the original Independent Engineer's Report (February 2009) and the Fitch Report (August 2009).

This assumes total liquidation (i.e., scrapped and sold off in pieces), so the IP, intangibles, etc. are ascribed no value. I also do not know how much equity is in escrow at this point, but it would be first out (cushioning DOE's recovery). The bottom line is that DOE's analysis is NOT correct in that it does not assume the correct cost for the building. Adding this cost back in and using the liquidation percentages assumed at closing, gives a much different recovery estimate in this scenario than DOE assumes (67% vs DOE's 22%). Importantly, the recoveries in this analysis are significantly HIGHER than DOE's estimate of recoveries under their proposed restructuring (DOE assumes 23%-35%). In other words, the Fitch's value of liquidating the assets today is higher than restructuring under DOE's proposal.

I can confirm this analysis with DOE, but the value of the land and building in my analysis are supported by the Independent Engineer and Rating Agency reports prior to closing.

\\CREDIT\Energy\Title 1\Solyndra\Output 2010\Solyndra Liquidation Comparison.xlsx

From: Mertens, Richard A.
Sent: Monday, January 03, 2011 11:09 AM
To: Mas, Alex; Ericsson, Sally C.; Timberlake, Courtney P.; Alish, Steven D.
Cc: Carroll, J. Kevin; Colyar, Kelly T.; Saad, Fouad P.
Subject: FW: Solyndra restructuring update

Attached and below are background for today's 2:45 pm meeting.

From: Saad, Fouad P.
Sent: Wednesday, December 22, 2010 11:01 AM
To: Colyar, Kelly T.
Cc: Carroll, J. Kevin
Subject: Solyndra restructuring update

We had a call with DOE yesterday (12/21) on the Solyndra restructuring, that was informed by the attachments to this email that Frances sent prior to the call. Below are some of the key take-aways from my notes:

- See the PPT presentation attached for an update on the company's status, DOE loan amounts disbursed (\$460 out of \$535 as of Dec.), background on the consolidation plan, etc.
- DOE asserts that this restructuring is a work-out, as Solyndra (the parent) will run out of cash as of January, 2011, and while the project's finances would at first glance be fine, it would be greatly impacted by a Solyndra bankruptcy given how integral the parent is to the project.

- DOE and its contractors has reviewed Solyndra's consolidation plan, which calls for \$150 million in additional capital to achieve construction completion in Q2 of calendar year 2011 and turn cash flow positive in Q1 2012. DOE has not, however, sought any independent third party validation of the plan and estimates; they have sought to assess its reasonableness internally. They have also not sought any external support from restructuring specialists over the past few months
- As we learned from DOE last week, Solyndra's investors will be contributing \$75 million over the next 2 quarters, during the same time period during which DOE's remaining \$75 million loan disbursements occur. This equity contribution would be ranked pari passu with DOE's remaining senior debt (\$150 million). The balance of DOE's debt \$385 would become "senior second position," along with the equity investors' most recent capital contribution of \$175 million, which they put in as convertible debt (and for which they gained rights to Solyndra's IP, apparently). Using Original Issue Discount (OID) notes in implementing this re-structuring DOE's debt (\$385m) would be discounted by 30%, the investors' convertible notes (\$175m) are to be discounted by 55%.
- However, the investors' new \$75 million infusion would be allowed to receive first payment preference in a liquidation prior to March 2013. We asked whether this might effectively subordinate even DOE's remaining senior secured loan. DOE stated that they did not believe it does, and that their counsel (LGP and DOE) had been involved. [Redacted] [Redacted] [Redacted] [Redacted] have requested DOE's legal position on this.
- DOE explains that it had "access" to Solyndra's IP in the original loan documentation, with a capacity limit of 300MW anticipated for lab 2; DOE did not have unlimited claims to the IP itself, and indeed the IP was later pledged to the investors who provided the most recent \$175 million in capital. DOE's contemplated restructuring would pledge the IP fully to DOE. It would also preclude DOE recourse to all the assets of Solyndra, the parent (leases, contracts, IP, etc.).
- DOE believes recovery from the restructuring would exceed recoveries if the project were to default today. They have provided their analysis. Their approach seems reasonable to me, although it depends on the feasibility of the consolidation plan, and various assumptions around the value of Solyndra as a going concern if it gets the capital it needs and makes it to 2012. DOE used two different comparable valuation approaches that led to similar results (\$200 to \$300 million valuation in 2012), and conclude the government is better off restructuring now than letting it default.
- While this may be true, the terms of the deal that make sense for the government.

Next steps:

- Review DOE's legal position re effective subordination
- Determine whether we concur this is a workout vs modification
- Tee up any policy considerations, prior to DOE's proposed closing date for this restructuring, January 10:

[Redacted] If you had other notes / take-aways, please feel free to chime in.

From: Nwachuku, Frances [Redacted]
Sent: Tuesday, December 21, 2010 1:05 PM
To: Saad, Fouad P.
Cc: Colyar, Kelly T.
Subject: RE: follow up

Find attached the recovery analysis as promised.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[Redacted]

From: Saad, Fouad P. [Redacted]
Sent: Monday, December 20, 2010 7:07 PM
To: Nwachuku, Frances
Cc: Colyar, Kelly T.
Subject: RE: follow up

Thank you, Frances. I'll arrange a call to number for number and circulate.

Having a preview of the recovery analysis would be very helpful, if that's ready before the full Credit Paper.
Thanks for offering to send that.

Fouad

[Redacted]

From: Nwachuku, Frances
Sent: Monday, December 20, 2010 5:59 PM
To: Saad, Fouad P.
Cc: Colyar, Kelly T.
Subject: RE: follow up

Yes, it does. Please find attached the presentation and the financial report. The recovery analysis is contained in the Credit Paper which I am still reviewing and will send through as soon as I am done editing it. Happy to send you the portion that contains that information, if you desire.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[Redacted]

From: Saad, Fouad P. [Redacted]
Sent: Monday, December 20, 2010 5:28 PM
To: Nwachuku, Frances

Cc: Colyar, Kelly T.
Subject: RE: follow up

Hello Frances,

Does tomorrow at 2:30 still work for DOE?

Fouad

From: Colyar, Kelly T.
Sent: Friday, December 17, 2010 5:33 PM
To: Nwachuku, Frances
Cc: Saad, Fouad P.
Subject: RE: follow up

Sorry—meant to cc Fouad here.

From: Colyar, Kelly T.
Sent: Friday, December 17, 2010 5:33 PM
To: 'Nwachuku, Frances'
Subject: RE: follow up

Frances,

That sounds great. I am hoping to be out of the next week but Fouad is available if I can't join the call. Should we plan to discuss Tuesday after we have a chance to look at the materials Monday evening? Does 2:30 Tuesday work for a call?

From: Nwachuku, Frances
Sent: Friday, December 17, 2010 5:20 PM
To: Colyar, Kelly T.
Subject: RE: follow up

Kelly,

Please let me know when you are available to discuss the parameters of the revised cost estimate.

By COB Monday, we will send over the requested information. In addition to the proposed deal structure and model, it will contain our assessment of recoveries under two bankruptcy scenarios—pre-project completion and post project completion/restructuring. Existing technical defaults were waived prior to funding (I believe that it was just the one default).

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

[REDACTED]

From: Colyar, Kelly T. [REDACTED]
Sent: Thursday, December 16, 2010 6:57 PM
To: Nwachuku, Frances
Subject: follow up

Frances,

Thanks again for the call earlier this week. I wanted to follow up on a few items. Specifically, do you have the summary of the proposed revised terms and financial model we discussed?

As I mentioned, we should also discuss the parameters for the revised cost estimate. We will need to wrap this up before DOE signs the amended loan agreements. We'll need to dig in a little deeper later on the specific cashflows, but below are the first order questions we'll need to think through in developing the cost estimate. Specifically, we need the analysis supporting the determination that the proposed restructuring would constitute a workout captured in the re-estimate, vs. a modification. Typically, two of the major considerations in this determination are whether the restructuring is done as a result of a default or imminent default where the borrower is not expected to be able to repay the current debt; and whether the cost of the restructuring is less than that of default or foreclosure, and optimizes recoveries for the U.S. government.

1. Do you have an analysis of potential losses and recoveries under the proposed and various alternative scenarios (e.g., calling default today or other alternatives)?
2. We understand you waived the requirement for the first equity payment to fund the cost overrun facility. Are there other covenants/requirements for which Solyndra is not in compliance or which DOE anticipates the borrower may not be in compliance? This would help in thinking through the particular scenario to model in this case.

Finally, should we schedule the discussion on Beacon for Monday? Do you have any materials you could circulate for that discussion? I found the Solyndra presentation in October very helpful. It might be helpful to have some background on that to help guide the discussion as well.

Let me know if you have any questions or would like to discuss.

Thanks.

DONOT COPY

Proposed Restructuring – Rationale and Design

In light of the financial crisis, DOE undertook an effort to assess the value of Solyndra under a variety of scenarios. As noted above, as a going concern, the Fab 2 facility should be able to generate approximately \$200 million of EBITDA annually. Currently, publicly traded PV companies, [REDACTED] and [REDACTED] trade at a level of between 8x and 12x EBITDA, which implies a potential long-term value for Solyndra that could reach \$2 billion.

The short-term assessment, however, is strained. Absent continued funding of the DOE loan, as well as the contribution of at least \$150 million in new capital, the company faces bankruptcy. In a bankruptcy scenario, DOE would have to look to its collateral for any potential recovery. Today, that collateral consists of the completed Fab 2 building and the subset of Fab 2 equipment that has been delivered to the site.

The land acquisition and construction costs of the new Fab 2 Front End building total about \$60 million. While it is unclear what the building designed for Solyndra's manufacturing processes could bring on an open market sale, it is unlikely that it would exceed its cost. More realistically, one could assume a liquidation value of the structure and land at perhaps 50% of the incurred cost.

Approximately \$275 million of the Fab 2 Front End equipment has been delivered to the site. Most of this equipment is highly customized for Solyndra's unique manufacturing processes and therefore has limited value in resale. Based on reviews of customized high tech used equipment values (including Fitch's estimate of salvage values for Abound), DOE estimates that the equipment could have a potential salvage value of 10% - 15% of original cost.

In sum, the current liquidation value of the DOE collateral is estimated at:

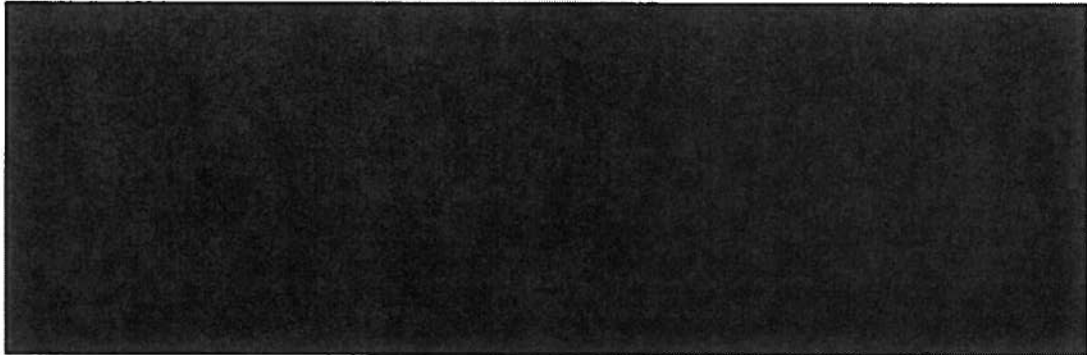
Building & Land	\$60 million	50% - 100%	\$30 mm - \$60mm
Equipment	\$275 million	10% - 15%	\$28 mm - \$41 mm
Total	\$335 million		\$58 mm - \$101mm

Through December, DOE has advanced \$400 million of its \$525 million commitment. At a liquidation value of between \$58 million - \$101 million, that implies a recovery rate of between [REDACTED]

As detailed below, the proposed restructuring plan will significantly enhance DOE's collateral position by giving it access to not just the Fab 2 assets, but to all of the corporate assets as well. This includes IP, third-party contracts and access to the operating and management team. As a result of the restructuring plan, DOE can look to a going-concern scenario in the event of liquidation instead of simply a salvage sale of equipment. This going concern valuation is further enhanced once Fab 2 is completed in the second quarter of 2011.

As discussed in the first paragraph, one way to estimate enterprise value of a going concern is by evaluating trading multiples of comparable companies. Unfortunately, Solyndra's lack of positive earnings currently makes this estimate impossible. One can look at projected earnings to make such an estimate, though the results in Solyndra's case must be considered carefully.





Thus, at a concluded going concern value of between \$200 million and \$300 million in 2011, the recovery percentage on the DOE investment of \$535 million is between [REDACTED] under the proposed restructuring plan which allows new investor capital of \$75 million to be recovered first in a forced liquidation. This represents an improvement from the estimated pre-restructuring recovery rate of 13% - 22% expected in a pre-restructuring liquidation scenario.

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As of December 2010, DOE has disbursed approximately \$460 Million of the \$535 Million which would reduce the recoverable value by a marginal amount. The analysis also does which would be first out or any potential work-in-progress/inventory.

August 2009 (Fitch)

	Estimated Cost (\$M)	Liquidation %	Liquidation Value (\$M)
Building and Land	\$ 380	80%	\$ 304
Equipment	\$ 319	10%	\$ 32
TOTAL	\$ 699		\$ 336
Net of Administrative Expenses (6%)			\$ 319
Recovery Estimate			69%

DOE Loan

Disbursed (December 2010) \$460

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1 loan. The analysis below does not include accrued interest
: not include an estimated \$25-\$30 million of equity in escrow

December 2010 (DOE)			
Estimated Cost			Liquidation Value
(\$M)		Liquidation %	(\$M)
\$ 80	50%-100%		\$30M-\$80M
\$ 275	10%-15%		\$28M-\$41M
\$ 335			\$58M-101M
			\$55M-\$96M
			12%-21%

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Footnote 595

From: [REDACTED]
Sent: Monday, January 03, 2011 3:14 PM
To: [REDACTED]
Subject: RE: Solyndra restructuring update

That's a good point. Also, if the borrower isn't able to repay under the terms of the restructuring, then a work-out should not be used. My understanding is that the branch thinks the borrower will default regardless. I don't think this is the point we want to make, but I can see the case for work-out based on [REDACTED] point.

(ab) *Work-outs* mean plans that offer options short of default or foreclosure for resolving troubled loans or loans in imminent default, such as deferring or forgiving principal or interest, reducing the borrower's interest rate, extending the loan maturity, or postponing collection action. Work-outs are expected to minimize the cost to the Government of resolving troubled loans or loans in imminent default. They should only be utilized if it is likely that the borrower will be able to repay under the terms of the work-out and if the cost of the work-out is less than the cost of a foreclosure. For post-1991 direct loans and loan guarantees, the expected effects of work-outs on cash flow are included in the original estimate of the subsidy cost. Therefore, to the extent that the effects of work-outs on cash flow are the same as originally estimated, they do not alter the subsidy cost. If the effects on cash flow are more or less than the original estimate, the differences are included in reestimates of the subsidy and are not a modification.

Page 12 of Section 185 OMB Circular No. 1-1 (REVISED NOVEMBER 2010)

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Budget Review Division
Policy Analyst, Federal Credit Programs
Office of Management and Budget

From: [REDACTED]
Sent: Monday, January 03, 2011 3:11 PM
To: [REDACTED]
Subject: Re: Solyndra restructuring update

DONOT COPY

Mods vs. Restructuring can be a gray area.

If this restructuring were one that suggested a lower cost to Government, I would see a better case for a workout designation. However, when you look to the definition of a workout (I am paraphrasing), it is a restructuring intended to result in the lowest cost to government of default. (185.3ab). So, if it effectively costs more to restructure, I would not consider it a workout. Also, the action here to ease loan terms, differs from actions assumed in the baseline. The two pieces combined makes it more a modification to me than a workout.

From: [REDACTED]
To: [REDACTED]
Sent: Mon Jan 03 15:01:57 2011
Subject: RE: Solyndra restructuring update

It seems like this could be viewed as a workout. No imminent default, but the definition of workout also covers "troubled loans." I would feel differently if DOE were providing additional capital beyond the existing \$535M obligation, but this is basically easing our loan terms so that Solyndra can attract new capital to increase the chances of the project succeeding.

Having said this, workouts should only proceed if the cost of the workout is less than the cost of default, and that does not seem to be the case given Kelly's analysis. I'm not sure we have any leverage against DOE if this is a workout and we disagree about the cost, other than we would need to approve the costs as included in the current, not-yet-approved reestimate.

I'm not the expert here, obviously, and I welcome your further thoughts.

From: [REDACTED]
Sent: Monday, January 03, 2011 2:55 PM
To: [REDACTED]
Subject: Re: Solyndra restructuring update

Thanks. For what it's worth, this looks like a modification to me. Kelly also forwarded an article that suggests DOE may have already modified the loan in June (by giving up IP rights), but did not update the cost.

If there is a policy call to view this differently, we will have a hard time walling this off on other Title 17 deals, but at a minimum should be able to use this as support for more realistic rates on new deals.

From: [REDACTED]
To: [REDACTED]
Sent: Mon Jan 03 14:40:29 2011
Subject: RE: Solyndra restructuring update

[REDACTED] and I are talking about this now - specifically whether it's a workout or a modification. I will go to the 3:45.

From: [REDACTED]
Sent: Monday, January 03, 2011 2:44 PM
To: [REDACTED]
Subject: Re: Solyndra restructuring update

I am headed to the optometrist-should I plan to be out in time for the 3:45 chat?

From: [REDACTED]
To: [REDACTED]
Sent: Mon Jan 03 13:42:36 2011
Subject: Re: Solyndra restructuring update

Let me know if folks think it would be helpful and I can call in at 3:45, or follow up with any questions you have on my email from Thursday. I have some afternoon appts. But can work around them.

Kelly's analysis confirms our earlier concern that DOE's restructuring could effectively result in higher costs than liquidation at this point. While it doesn't change my preliminary view on this, note that this is Title 17's first award, and therefore DOE is likely to be very sensitive about optics if it should default.

From: [REDACTED]
To: [REDACTED]
Cc: Lyberg, Sarah A.
Sent: Mon Jan 03 13:15:01 2011
Subject: FW: Solyndra restructuring update

Per my last email.

Budget Review Division
Policy Analyst, Federal Credit Programs
Office of Management and Budget

From: Colyar, Kelly T.
Sent: Monday, January 03, 2011 12:40 PM
To: [REDACTED]; [REDACTED] Saad, Fouad P.; Carroll, J. Kevin
Subject: RE: Solyndra restructuring update

I pulled together a quick spreadsheet to look at DOE's liquidation value analysis. Their numbers on the cost of the building seemed wildly off to me so I went back to check the original Independent Engineer's Report (February 2009) and the Fitch Report (August 2009).

This assumes total liquidation (i.e., scrapped and sold off in pieces), so the IP, intangibles, etc. are ascribed no value. I also do not know how much equity is in the stock at this point, but it would be first out (cushioning DOE's recovery). The bottom line is that DOE's analysis is NOT correct in that it does not assume the correct cost for the building. Adding this cost back in and using the liquidation percentages assumed at closing, gives a much different recovery estimate in this scenario than DOE assumes (63% vs. DOE's 23%-22%). More importantly, the recoveries in this analysis are significantly HIGHER than DOE's estimate of recoveries under their proposed restructuring (DOE assumes 23%-38%). In other words, the USG is better off liquidating the assets today than restructuring under DOE's proposal.

I can confirm this analysis with DOE, but the value of the land and building in my analysis are supported by the Independent Engineer and Rating Agency reports prior to closing.

J:\CREDIT\Energy\Title 17\Solyndra\October 2010\Solyndra Liquidation Comparison.xlsx

DO NOT COPY

From: Mertens, Richard A.
Sent: Monday, January 03, 2011 11:09 AM
To: Mas, Alex; Ericsson, Sally C.; Timberlake, Courtney B.; Aitken, Steven D.; [REDACTED]
Cc: Carroll, J. Kevin; Colyar, Kelly T.; Saad, Fouad P.
Subject: FW: Solyndra restructuring update

Attached and below are background for today's 3:45 pm meeting.

From: Saad, Fouad P.
Sent: Wednesday, December 22, 2010 6:01 PM
To: Colyar, Kelly T.; [REDACTED]
Cc: Carroll, J. Kevin
Subject: Solyndra restructuring update

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- See the PPT presentation attached for an update on the company's status, DOE loan amounts disbursed (\$460 out of \$535 as of Dec.), background on the consolidation plan, etc.

- DOE asserts that this restructuring is a work-out, as Solyndra (the parent) will run out of cash as of January, 2011, and while the project's finances would at first glance be fine, it would be greatly impacted by a Solyndra bankruptcy given how integral the parent is to the project.
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- As we learned from DOE last week, Solyndra's investors will be contributing \$75 million over the next 2 quarters, during the same time period during which DOE's remaining \$75 million loan disbursements occur. This equity contribution would be ranked pari passu with DOE's remaining senior debt (\$150 million). The balance of DOE's debt \$385 would be become "senior second position," along with the equity investors' most recent capital contribution of \$175 million, which they put in as convertible debt (and for which they gained rights to Solyndra's IP, apparently). Using Original Issue Discount (OID) notes in implementing this re-structuring DOE's debt (\$385m) would be discounted by 30%, the investors' convertible notes (\$175m) are to be discounted by 55%.
- However, the investors' new \$75 million infusion would be allowed to receive first payment preference in a liquidation prior to March 2013. We asked whether this might effectively subordinate even DOE's remaining senior secured loan. DOE stated that they did not believe it does, and that their counsel (LGP and DOE) had been involved (Cestari, Richardson and Harris). I have requested DOE's legal position on this.
- DOE explains that it had "access" to Solyndra's IP in the original loan documentation, with a capacity limit of 300MW anticipated for Feb 25. DOE did not have unlimited claims to the IP itself, and indeed the IP was later pledged to the investors who provided the most recent \$75 million in capital. DOE's contemplated restructuring would pledge this IP fully to DOE. It would also give DOE recourse to all the assets of Solyndra, the parent (asses, contracts, IP, etc.).
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- While this may be true, the terms of the deal may not be as good as they could have been for the government.

Next steps:

- Review DOE's legal position re: effective subordination
- Determine whether we concur this is a work-out vs. modifications
- Tee up any policy considerations, prior to DOE's proposed closing date for this restructuring, January 10.

█ If you had other notes / take-aways, please feel free to chime in.

From: Nwachuku, Frances █
 Sent: Tuesday, December 21, 2010 1:05 PM
 To: Saad, Fouad P.
 Cc: Colyar, Kelly T.
 Subject: RE: follow up

Find attached the recovery analysis as promised.

Frances

Frances I. Nwachuku
Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW
Washington, DC 20585



From: Saad, Fouad P.
Sent: Monday, December 20, 2010 10:40 AM
To: Nwachuku, Frances
Cc: Colyar, Kelly T.
Subject: RE: follow up

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Thank you, Frances. I'll arrange a call in number tomorrow and circulate.

Having a preview of the recovery analysis would be very helpful if that's ready before the full Credit Paper.
Thanks for offering to send that.

Fouad

From: Nwachuku, Frances
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Yes, it does. Please find attached the presentation and the financial model. The recovery analysis is contained in the Credit Paper which I am still reviewing and will send through as soon as I am done editing it. Happy to send you the portion that contains that information, if you desire.

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From: Colyar, Kelly T.
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CONFIDENTIAL

Frances,

That sounds great. I am hoping to be out part of next week, but Fouad is available if I can't join the call. Should we plan to discuss Tuesday after we have a chance to look at the materials Monday evening? Does 2:30 Tuesday work for a call?

From: Nwachuku, Frances [REDACTED]
Sent: Friday, December 17, 2010 5:20 PM
To: Colyar, Kelly T.
Subject: RE: follow up

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Kelly,

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By COB Monday, we will send over the requested information. In addition to the proposed deal structure and model, it will contain our assessment of recoveries under two bankruptcy scenarios - pre-project completion and post project completion/restructuring. Existing technical defaults were waived prior to funding (I believe that it was just the one default).

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Director
Portfolio Management
Loan Guarantee Program Office
US Department of Energy
1000 Independence Avenue SW

Washington, DC 20585

From: Colyar, Kelly T. [REDACTED]
Sent: Thursday, December 16, 2010 6:57 PM
To: Nwachuku, Frances
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1. Do you have an analysis of potential losses and recoveries under the proposed and various alternative scenarios (e.g., calling default today or other alternatives)?
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Finally, should we schedule the discussion on [REDACTED] for Monday? Do you have any materials you could circulate for that discussion? I found the Solyndra presentation in October very helpful. It might be helpful to have some background on that to help guide the discussion as well.

Let me know if you have any questions or would like to discuss.

Thanks.

Footnote 597

[REDACTED]

From: Colyar, Kelly T.
Sent: Monday, January 03, 2011 11:58 AM
To: [REDACTED]
Attachments: Solyndra Liquidation Comparison Deck

Am I missing something here?

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As of December 2010, DOE has disbursed approximately \$460 Million of the \$535 Million which would reduce the recoverable value by a marginal amount. The analysis also does which would be first out.

	Estimated Cost (\$M)	August 2009 (Fitch) Liquidation %	Liquidation Value (\$M)
Building and Land	\$ 380	80%	\$ 304
Equipment	\$ 318	10%	\$ 32
TOTAL	\$ 698		\$ 336
Net of Administrative Expenses (5%)			\$ 319
Recovery Estimate			89%

DOE Loan
Disbursed
(December 2010) \$460

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1 loan. The analysis below does not include accrued interest
: not include an estimated \$25-\$30 million of equity in escrow

December 2010 (DOE)		
Estimated Cost (\$M)	Liquidation %	Liquidation Value (\$M)
\$ 60	50%-100%	\$30M-\$60M
\$ 275	10%-15%	\$28M-\$41M
\$ 336		\$58M-101M
		\$55M-\$68M
		12%-21%

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DO NOT COPY

Footnote 598

[REDACTED]

From: Colyar, Kelly T.
Sent: Monday, January 03, 2011 1:46 PM
To: [REDACTED]
Subject: RE: RE:

My thoughts exactly.

[REDACTED]

From: [REDACTED]
Sent: Monday, January 03, 2011 1:45 PM
To: Colyar, Kelly T.
Subject: RE: RE:

Must be. I don't remember Solyndra Inc having any converts on their BS.

If this is the \$175M, then Mo-Fo needs to review DOE's rights concerning this IP asap.

If we were in Mr. Rogers' Neighborhood, he would say, "Can you say Fraudulent Conveyance?" "Sure you can ..."

From: Colyar, Kelly T. [REDACTED]
Sent: Monday, January 03, 2011 1:45 PM
To: [REDACTED]
Subject: RE:

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Is this the \$175M that has the IP?

<http://www.greentechmedia.com/articles/read/solyndra-ipo-cancelled/>

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[REDACTED]

From: [REDACTED]
Sent: Monday, January 03, 2011 12:17 PM
To: Colyar, Kelly T.; [REDACTED]
Subject: RE:

I don't have the IE report, but I bet that report gave a breakdown of the land and building. The cost should be within 10-20% of the Fitch report numbers.

The DOE analysis is missing something, not you!

[REDACTED]

From: Colyar, Kelly T. [REDACTED]
Sent: Monday, January 03, 2011 11:58 AM
To: [REDACTED]
Subject:

Am I missing something here?

Footnote 600

From: [REDACTED]
 Sent: Monday, January 03, 2011 8:27 PM
 To: [REDACTED]
 Cc: [REDACTED]
 Subject: RE: Solyndra mtg readout

One addition to my notes below. Alex asked where Treasury was on the issue and Kelly responded that Treasury doesn't have a statutory responsibility here so is not likely to opine officially. Alex asked Energy branch to reach out to Treasury to see if they would agree, at least analytically, that the restructuring is not in the USG's best interest.

Budget Review Division
 Policy Analyst, Federal Credit Programs
 Office of Management and Budget

From: [REDACTED]
 Sent: Monday, January 03, 2011 8:27 PM
 To: [REDACTED]
 Cc: [REDACTED]
 Subject: Solyndra mtg readout

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[REDACTED] and I attended the meeting with Alex, Sally, Steve Aitken, Bill Richardson, Rick Mertens and the Energy branch. Below is a readout as well as details on follow up deliverables.

Kelly and Foud explained the issues with DOE's restructuring proposal. Alex seemed to think that liquidating the project now was the best option in terms of the Government's interest, but wanted to tee it up for Jeff Zients and eventually Jack. The question for Jack would be less on the terms of the restructuring and more on whether OMB should play an active role in these types of decisions. Steve and Bill said they'd forward the subordination question to Susan Richardson at DOE and cc them both. We also discussed the difference between a work-out and a modification and explained the issue with the lack of ARPA funding for modifications.

To tee up the proposal for Jeff, Alex asked the branch to put together a 1 page memo by COB tomorrow focusing on the following.

1. DOE vs OMB liquidation analysis
2. Broader economic analysis (expected value future action, i.e., restructuring or not funding the rest of the original obligation)
3. Market analysis (will the project be viable upon completion)
4. Subordination issues (placeholder for legal)
5. Likely timing of default if restructured/not restructured.

ACTION ITEM for CREDIT CREW: Bill Richardson asked if there was precedent for this level of intervention in other credit programs to inform the decision as to the appropriate level of OMB involvement. I said that we'd research some examples, but I wasn't aware of any off the top of my head. I'm sure there are examples in MARAD, RRIF or TIRA where we've done work-outs which were in the USG's best interest, but are there examples where we've done a modification because the restructuring was not in the best interest of the Government? I know USDA does routine administrative work-outs in which OMB is not involved but the agency assumes some level of work-outs in the original subsidy rate.

[REDACTED] please let me know if I misstated anything. Thanks!

[REDACTED]
Budget Review Division
Policy Analyst, Federal Credit Programs
Office of Management and Budget
[REDACTED]

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Footnote 602

[REDACTED]

From: Mertens, Richard A.
Sent: Tuesday, January 04, 2011 7:41 PM
To: Carroll, J. Kevin; Colyar, Kelly T.; Saad, Fouad P.
Cc: [REDACTED]; Aitken, Steven D.
Subject: FW: Solyndra

Never mind.

-----Original Message-----

From: Mas, Alex
Sent: Tuesday, January 04, 2011 7:40 PM
To: Mertens, Richard A.
Subject:

Hope this isn't coming too late. Hold on the 1-pager. I spoke to Jack briefly and have some initial guidance.

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Footnote 603, 604

January 3, 2011

MEMORANDUM FOR ALEX MAS, SALLY ERICSSON, COURTNEY TIMBERLAKE

FROM: Energy, Science and Water Division, Budget Analysis Branch (Credit Crew), Economic Policy

SUBJECT: DOE Proposal for Restructuring the Solyndra Loan Guarantee

Issue: DOE plans to restructure the Solyndra \$535 million loan guarantee due to financial stress and severe liquidity issues at the parent company. DOE plans to execute the revised loan agreement on or about January 10. Prior to executing the revised terms, OMB must review and approve the associated change in cost of the loan. It is unclear that the DOE proposal would minimize the cost to the Government, that the restructuring is necessary to complete the project, or that the proposed terms are consistent with statutory and federal credit policy requirements. This memo provides background on the Solyndra loan guarantee, a summary of the proposed changes, and options for proceeding with this restructuring.

Background: Solyndra was the first loan guarantee recipient under the Title XVII program and has garnered a significant amount of media and political attention; both good and bad. VICE President Secretary Chu, Governor Schwarzenegger, and other state and local officials attended the opening ceremony. POTUS visited Solyndra in May 2010 calling Solyndra a "testament to American ingenuity and innovation and the fact that we continue to have the best universities in the world, the best technology in the world, and most importantly the best workers in the world."

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The \$535 million DOE loan provided 73% of the total \$733 million financing for the construction of a 231 MW solar panel manufacturing facility in Fremont, California. This facility was established as a Special Purpose Vehicle (SPV), which was a subsidiary of Solyndra Inc. although all contracts (e.g., equipment supply, operations and maintenance, sales) were with Solyndra Inc. DOE provided a 100% guarantee of the debt issued by the Federal Financing Bank. DOE has disbursed approximately \$460 million of the loan as of December 2010. The next disbursement is scheduled for January.

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In June 2010, Solyndra cancelled its planned Initial Public Offering (IPO) and "re-evaluated operations" following a going concern statement by auditors in March. Subsequently, Solyndra Inc. raised an additional \$175 million from existing investors and replaced the CEO and management team. Solyndra also pledged the Intellectual Property to these investors in exchange for the \$175 million. In October 2010, DOE advised OMB that Solyndra Inc. was experiencing extreme financial distress and was in discussions with DOE to restructure the DOE loan. On November 3, 2010, Solyndra announced that it was closing its "Fab 1" facility and would be laying off approximately 200 personnel (12.5% of workforce).

Solyndra and DOE believe that the financial deterioration of Solyndra is due to the following factors:

- A failure to provide competitive forward pricing for their panels while competitors (crystalline silicon manufacturers) cut prices by over 30% in 2009
- Limited investment in marketing and sales infrastructure resulting in significantly lower demand for product commencing in 2010
- Relatively higher cost structure compared to peers and overspending on R&D through mid-2010
- Lack of new equity to fund operations during ramp-up period (suspended IPO effort in early 2010)

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DOE believes that Solyndra will run out of cash in January 2010 without continued DOE funding under the loan guarantee and has proposed restructuring the loan guarantee as of January 2010.

Proposed Restructuring:

DOE was scheduled to shut down its portion of the project as of December 23, DOE has proposed the following changes to the loan guarantee agreement. Existing investors would provide an additional \$150 million in senior debt and DOE's loan would be split into two pieces. Specifically, the debt would be structured according to the following terms:

- Senior Debt of up to \$300 million and Senior Second Position Debt of \$560 million
 - Senior Secured Debt (\$300 M): Three tranches that all have a period of Paid-In-Kind (PIK) interest and principal deferral to conserve cash in the near term:
 - Tranche A - \$75 M of new investor equity¹ (contribution in January 2011), ranked pari-passu with DOE senior debt with no subordination preference in liquidation prior to March 2013
 - Tranche B - \$170 M of DOE debt under the existing obligation of \$535 M (including remaining undisbursed - \$73 M)
 - Tranche C - up to \$55 M of new investor equity without claims in first-out payment preference
 - Senior Second Position (\$560 M): \$315 M of existing DOE FFB debt and \$245 M of investor convertible debt
 - Both loans are restructured to reduce the face value (i.e., are discounted) at issuance and accrete to full face amount at maturity
 - Both pieces have interest capitalization and deferred principal payment periods

[Redacted]

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Analysis:

OMB staff has several concerns with DOE's proposed changes:

1. The proposed changes subordinate DOE's loan. As mentioned, the subordination of DOE's loan increases risk and cost for taxpayers. OMB and DOE counsel are reviewing whether the subordination of the DOE loan guarantee is allowable under Title 17's authorization statute. Federal credit policies under Chapter A-129 note with respect to restructurings:

The Government's claims should not be subordinated to the claims of other creditors, as in the case of a borrower's default on either a direct loan or a guaranteed loan. Subordination increases the risk of loss to the Government, since other creditors would have first claim on the borrower's assets.

In some cases where it is consistent with a program's underlying authorization and policy goals, subordination has been allowed. For example, some programs allow limited subordination to liens incurred when restoring collateral damaged by natural disasters, which mitigates risk and cost on the Government's loan. However, Title 17 has specific language restricting subordination. Section 1702 (d) (3) of the program's authorizing statute states:

Default: prohibited by the program's statutory requirements

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¹ DOE references the new capital as both senior debt and equity. Given the seniority in the capital stack, classification as senior debt is likely most appropriate.

SUBORDINATION.—The obligation shall be subject to the condition that the obligation is not subordinate to other financing.

- 2. **The proposed changes may not optimize recoveries for the U.S. government.** DOE estimates that a liquidation today would result in recovering approximately 13%-22% of the \$460 million disbursed so far. DOE also estimates a going concern value of Solyndra post restructuring of \$200 to \$300 million resulting in an estimated recovery rate of 23%-36% after giving effect to the \$75 million in senior debt with first payment priority. However, DOE's liquidation analysis likely underestimates the recovery to DOE through liquidation. It does not appear to include the full value of the land and building, or the future losses on interest. The going concern analysis likely overstates potential recoveries, as it assumes Solyndra would emerge from restructuring operating on par with stronger competitors, and it does not appear to take into account the cost of interest which is being deferred under the loan restructuring.

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DOE's proposal also likely ~~also~~ ~~increases~~ ~~recovery~~ ~~through~~ ~~liquidation~~ ~~today~~, as it puts at risk the additional \$75 million of the DOE which has not yet been disbursed and reducing DOE's claim on the existing debt.

- 3. **The proposed changes may only delay a default.** DOE believes that Solyndra will run out of cash this month without continued DOE funding under the loan guarantee. However, even under a restructuring, bankruptcy and/or default are a real possibility and could occur within the next year. DOE and OMB staff differ in their view of the long-term viability of the company. DOE believes that Solyndra's consolidation plan is feasible and that Solyndra should be able to produce and sell its product profitably given technical and market considerations. However, DOE has stated that a key rationale for the proposed restructuring is that it improves DOE's ability to liquidate on a going concern basis, indicating that ~~the project would not be able to make payments on the restructured loan, and future default remains a strong possibility.~~

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OMB staff have significant concerns about the financial viability of the company based on several factors. Solyndra has been unable to attract any new investors. Existing investors who are providing the additional capital were only willing to provide half of the requested amount in the form of subordinated debt on condition that they have first payment preference in liquidation and that a significant portion of DOE's claim be subordinated. ~~Under the agreement, the fact that these investors were unwilling to inject any capital at all indicates that they may also have significant concerns about the company's viability, and that they would be pursuing a different course of action. If this is the case, the restructuring would not have a realistic chance of success. Investors would likely choose to sell the facility or their shares on the market, which is scheduled for later in 2011 (with a ramp up period beginning in 2010).~~

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Options:

- **Option 1: (RECOMMENDED) Requires That the Revised Loan Guarantee be Treated as a Modification.** Under this option, DOE would need budget authority to cover the cost of the changes before amending the DOE loan terms. Although the parent company is facing severe liquidity issues, ~~DOE's proposal does not appear to optimize recoveries for the U.S. government, nor was the proposed restructuring assumed in the baseline cashflows for the loan. Based on these facts, it does not appear that proposed restructuring meets the definition of a workout under ECRA implementing guidance in A-11, and should be treated as a modification.~~

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• Option 2: Treat the Revised Loan Guarantee as a Work Out (Re-estimate). If OMB were to determine that the restructuring was a work out, it would effectively accept DOE's view that the parent's financial condition has a direct impact on the borrower given the heavy reliance of the project on the parent resulting in an imminent default by the borrower. The subsidy rate for the loan guarantee would be re-estimated, and any increase in the cost would be funded through permanent indefinite authority instead of Title 17 appropriations. Since DOE would not bear the cost of the changed terms, this option may create a precedent for the program to make changes to other obligated loan guarantees that would increase the cost. If this option is chosen, RMO and BAB staff strongly recommend that subsidy estimates for future transactions take into account potential actions by DOE that may result in less than optimal recoveries for the government.

OMB staff believe that DOE's proposal increases risk for taxpayers and decreases potential recoveries from the project in a default. If DOE is legally prohibited from subordinating its loan, DOE would be unable to move forward with the project. If DOE is not legally prohibited, any changes to the agreement would require a policy decision to be made with DOE on these issues. [Redacted]

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[Redacted]

From: [Redacted]
Sent: Tuesday, January 04, 2011 1:08 PM
To: [Redacted] Colyar, Kelly T.; [Redacted] Saad, Fouad P.
Subject: RE: Solyndra memo: COMMENTS BY 1:00 PLEASE
Attachments: Solyndra Restructuring - CM_cc.docx

Credit crew comments are in the attached, layered on [Redacted] (We were already halfway through when Fouad opened the document, and didn't want to lose time).

I don't know that the last option is a viable one (require DOE to change terms), since OMB does not have authority to make decisions for the agency; we only have authority over the costs under FCRA, and coordination responsibilities.

One option might be to strike the third option, and work it into the first option (modification) as a pro that it would be captured in the cost if this is found legal, and a con on the second (work-out), as we would need to engage on the legal and policy issues either way.

From: [Redacted]
Sent: Tuesday, January 04, 2011 12:35 PM
To: Colyar, Kelly T.; [Redacted] Saad, Fouad P.
Subject: RE: Solyndra memo: COMMENTS BY 1:00 PLEASE

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A few comments/questions attached

From: Colyar, Kelly T.
Sent: Tuesday, January 04, 2011 12:06 PM
To: [Redacted] Saad, Fouad P.
Subject: Solyndra memo: COMMENTS BY 1:00 PLEASE

This still needs more work, but we are scheduled to meet with Alex and Jeff at 3:30. Please send me any edits by 1:00.

Thanks.

J:\CREDIT\Energy\Title 17\Solyndra\October 2010\Solyndra Restructuring.docx

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January 4, 2010

MEMORANDUM FOR THE DIRECTOR

THROUGH: Alex Mas
Sally Ericsson
Courtney Timberlake

FROM: Kelly Colyer

SUBJECT: DOE Loan Guarantee for Solyndra

DOE plans to restructure the ~~DOE's~~ ~~loan~~ ~~guarantee~~ ~~due~~ ~~to~~ ~~financial~~ ~~stress~~ ~~and~~ ~~severe~~ ~~liquidity~~ ~~issues~~ ~~at~~ ~~the~~ ~~parent~~ ~~company~~. DOE is aware that Solyndra will run out of cash in January 2011 without continued DOE funding under the loan guarantee and has proposed restructuring the loan. Solyndra was the first low-carbon manufacturing plant under DOE's loan guarantee program in September 2009, and supports the construction of a ~~new~~ ~~high~~ ~~tech~~ ~~manufacturing~~ ~~plant~~ ~~in~~ ~~Fremont~~, ~~California~~, ~~to~~ ~~produce~~ ~~its~~ ~~proprietary~~ ~~super~~ ~~conducting~~ ~~materials~~, which consist of ~~arrays~~ ~~of~~ ~~silicones~~.

The BMO, BRD, and GC are reviewing the proposal and have identified several concerns. It is not clear that the DOE proposal would minimize the cost to the Government or that the restructuring is necessary to complete the project. It is also not clear that the proposed terms are consistent with statutory requirements and Federal credit policies intended to mitigate risks and protect the taxpayer. Further, the DOE proposal would subordinate the DOE loan to new capital from existing investors, which is inconsistent with Federal credit policies under Circular A-129 and might not be allowable under Title 17's authorizing statute. Even under DOE's proposed restructuring, we are skeptical about the long term viability of the company—bankruptcy and liquidation are still a possibility. The company's product is priced at a premium in a market with rapidly declining prices and the company's cost structure does not cover operating margins. It is not clear that Solyndra would be able to achieve the scale and efficiency improvements necessary to improve margins. Solyndra has been unable to attract any new investors and its existing investors are only willing to provide part of the required capital structured as senior debt if DOE agrees to subordinate a significant portion of its loan.

OMB is required by statute to review and approve the associated terms in effect of the loan prior to executing the revised terms. We will continue to work with DOE on this determination and the resulting cost estimate. Based on OMB's determination, it may lead DOE to take a different approach to resolve Solyndra.

However, there is a more fundamental issue of whether OMB should take a more active policy role with respect to the DOE proposal. In addition to fulfilling the statutory role noted above, OMB could ask DOE to attempt to renegotiate changes to the terms of the restructuring to potentially improve the financial position of the Federal government, or participate in deciding whether it is in the best interest of the Federal government to possibly liquidate the project instead of restructuring. Alternatively, we could suggest that DOE contract with an outside firm to provide a third-party assessment of options for addressing Solyndra's liquidity crisis, which would help demonstrate that the Administration's decision was informed by an independent assessment by private sector experts.

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DOE is continuing to work with Solvra and other parties to the project on its proposal and currently expects to finalize the restructuring in the next four to six weeks.

Debate: What role should OMS play in these discussions?

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Footnote 605, 606

From: Colyar, Kelly T.
 Sent: Tuesday, January 04, 2011 7:50 PM
 To: Carroll, J. Kevin; Saad, Fouad P.; Mertens, Richard A.
 Cc: [REDACTED]
 Subject: RE: Solyndra

Yes—the project company is fully financed. The equity was funded in full prior to closing and put in escrow. They have sufficient funds to complete the project.

The issue is that the project co is completely dependent on the parent for EVERY contract (equipment, sales, operations, etc.). Solyndra Inc is the only counter-party. FYI—financial condition of the parent is the number one issue I flagged at DOE and which was never addressed—DOE never reviewed the parent company's financial condition (and the project model was flawed in that it showed no working capital).

So, DOE's point is that if the parent goes bankrupt, there is no counter-party for any contract. True—but they could be re-established. DOE's other point is they don't have the IP so couldn't sell the project company as a going concern—hence the structure they have proposed.

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From: Carroll, J. Kevin
 To: Saad, Fouad P.; Colyar, Kelly T.; Mertens, Richard A.
 Cc: [REDACTED]
 Sent: Tue Jan 04 19:35:56 2011
 Subject: RE: Solyndra

The part that I keep tripping up on is this or that the restructuring is necessary to complete the project.

Kelly, is the implication here that the project company, if given the cash money and they spend it on completing the project (buying and installing the equipment etc - I assume the talking is done), they will have enough money to do so?

Isn't the parent supposed to be contributing cash as well from its operations?

Maybe I am misunderstanding the statement.

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From: Saad, Fouad P.
 Sent: Tuesday, January 04, 2011 7:05 PM
 To: Colyar, Kelly T.; Mertens, Richard A.
 Cc: Carroll, J. Kevin; [REDACTED]
 Subject: RE: Solyndra

I suggest one substantive addition below. Jeff and Alex seemed to be suggesting we make the choice very explicit of whether or not OMB should get involved in deciding whether to liquidate or allow a restructuring to proceed.

From: Colyar, Kelly T.
 Sent: Tuesday, January 04, 2011 6:44 PM
 To: Mertens, Richard A.
 Cc: Carroll, J. Kevin; Saad, Fouad P.; [REDACTED]
 Subject: RE: Solyndra

Below is a draft. Please let me know if you have any comments/edits. I have to leave at 6:50, but can incorporate comments/edits later this evening and re-circulate.

DOE plans to restructure the Solyndra \$535 million loan guarantee due to financial stress and severe liquidity issues at the parent company. DOE believes that Solyndra will run out of cash in January 2011 without continued DOE funding under the loan guarantee and has proposed restructuring the loan. OMB staff have concerns with the proposal. It is not clear that the DOE proposal would minimize the cost to the Government or that the restructuring is necessary to complete the project. Further, it is not clear that the proposed terms are consistent with statutory requirements and federal credit policies intended to mitigate risks and protect the taxpayer. Further analysis is needed, but it appears that a liquidation of the assets today may result in lower costs to Government than the proposed restructuring. The DOE proposal would subordinate the DOE loan to new capital from existing investors. OMB and DOE counsel are reviewing whether the subordination is allowable under Title 17's authorizing statute. Subordination is also inconsistent with Federal credit policies under Circular A-129.

Even under restructuring, OMB staff are skeptical about the long term viability of the company—bankruptcy and/or default are a real possibility since Solyndra's product is priced at a premium in a market with rapidly declining prices and the company's cost structure does not cover operating margins. It is not clear that Solyndra would be able to achieve the scale and efficiency improvements necessary to improve margins. Solyndra's inability to attract any new investors in recent months also signals market reservations about the company's viability. The existing investors who would provide additional capital for restructuring are only willing to provide half of the required amount as senior debt provided that they have first payment preference in liquidation and that a significant portion of DOE's loan be subordinated.

Prior to executing the revised terms, OMB must review and approve the associated change in cost of the loan. OMB must determine if the change constitutes a write-off or modification (in consultation with DOE). OMB staff will continue to work with DOE on this determination and the resulting cost estimate. Based on OMB's determination, it may lead DOE to take a different approach to resolve Solyndra. However, assuming that the legal question on subordination is resolved, there is a more fundamental issue of whether OMB should take a more active policy role with respect to the DOE proposal, including requiring potential changes to the terms or participating in decisions to possibly liquidate the project instead of the proposed restructuring. What role should OMB take in these discussions?

From: Mertens, Richard A.
Sent: Tuesday, January 04, 2011 4:56 PM
To: Colyar, Kelly T.
Cc: Carroll, J. Kevin; Saad, Fouad P.
Subject: FW: Solyndra

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Is it possible to do a very short (literally two paragraph summary) note by the end of today?

From: Mas, Alex
Sent: Tuesday, January 04, 2011 4:52 PM
To: Mertens, Richard A.
Subject:

Senior staff is at 9:30-10:00 tomorrow. Could we get a paragraph or two by then to try to catch Jack after?

[REDACTED]

From: Mertens, Richard A.
Sent: Tuesday, January 04, 2011 7:41 PM
To: Carroll, J. Kevin; Colvar, Kelly T.; Saad, Fouad P.
Cc: [REDACTED]; Aitken, Steven D.
Subject: FW: Solyndra

Never mind.

-----Original Message-----

From: Mas, Alex
Sent: Tuesday, January 04, 2011 7:40 PM
To: Mertens, Richard A.
Subject:

Hope this isn't coming too late. Hold on the 1-pager. I spoke to Jack briefly and have some initial guidance.

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From: Colyar, Kelly T.
Sent: Thursday, January 06, 2011 9:18 AM
To: [REDACTED]
Cc: [REDACTED] Saad, Fouad P.
Subject: Re: Solyndra

Sure.

----- Original Message -----

From: [REDACTED]
To: Colyar, Kelly T.
Cc: [REDACTED] Saad, Fouad P.
Sent: Thu Jan 06 09:13:17 2011
Subject: RE: Solyndra

I'm booked until about 12:30. Could you call me then? [REDACTED] out this am.

-----Original Message-----

From: Colyar, Kelly
Sent: Thursday, January 06, 2011 9:12 AM
To: [REDACTED] Saad, Fouad P.; [REDACTED]
Subject: Re: Solyndra

I'll call you later this morning.

----- Original Message -----

From: [REDACTED]
To: Colyar, Kelly T.; Saad, Fouad P.; [REDACTED]
Sent: Thu Jan 06 08:45:00 2011
Subject: Solyndra

Just checking in...What was the guidance from the director that Alex referenced?

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